

JOHN L. RUNFT BIO SKETCH

Idaho Bar # 1059

Managing member of Runft & Steele Law Offices, PLLC, has extensive experience in civil litigation and in transactional practice in business, contract, commercial, corporate, and administrative law, including, and appeals in state and federal courts in matters of business, contract, tort, administrative, and constitutional law.

Professional: Admitted, appeared and argued as lead counsel before the United States Supreme Court, the Supreme Court of the State of Idaho, the United States Court of Appeals for the Federal Circuit, the United States Court of Appeals for the Ninth Circuit, the United States Claims Court, and the United States District Court for the District of Idaho; admitted pro hac vice in other federal district courts and district and superior courts of other states;

Education: College of Idaho (B.A., 1962); Received Outstanding Senior Man Award upon graduation. Recipient of a National Honor Scholarship to the University of Chicago Law School., J.D. University of Chicago Law School, 1965; Recipient, Justice Jackson Award in Constitutional Law upon graduation.

Military Service: Served three years (1955-1958) in United States Army, Honorable Discharge. Stationed in Germany with an MI Unit engaged in refugee and expellee interrogation and analysis.

U.S. Government Service: Appointed Civilian Aide to the Secretary of the Army of the United States, August 1988 to April, 1995; Affiliated with SBA/SCORE program, 2005 to date).

Additional Information: AV rated by Martindale Hubbell since 1982.
Speaks, reads and writes the German language.

Practical Practice Tips

Young Lawyers Section meeting,

Noon session Nov. 11, 2019
By John Runft ID Bar No 1059

OUTLINE.

1. Client Relations and Complaints.

- communications
- engagement letter, See forms

2. Litigation.

- confirmation – use e-mail copiously.
- Delimiting discovery in cases containing material contracts;
 - Scheduling Order - Motion for Summary Judgment IRCP 56, or;
 - Motion for declaratory judgment under I.C. §10-1201.
- Doctrine of Quasi Estoppel – Preclusion of contrary positions to detriment of party;
- Preservation of confidentiality in communications with experts;
- Forms for motions in limine;
- The BIG case – overloaded with ESI
 - Spoliation Letter – puts defendants (and your own clients) on notice of a potential claim and underscores their obligation to not destroy any potentially relevant evidence. There is a preexisting obligation to not destroy, alter, or conceal evidence. See form.
 - Sedona Conference - Established principles for best practices, recommendations, and principles for addressing electronically stored information (ESI) issues in disputes—whether in federal or state court, and whether during or before the commencement of litigation.
- Use of a Master – IRCP Rule 53 - Provide for ex parte communication in contract with Master and in Court Order of Appointment. See FormS.
- Side bar practice and making record absent the jury

3. Contracts.

- Heading - use to establish effective date and parties. See form.
- General Provisions. See form.

4. Misc.

- Vernacular

r u n f t s t e e l e . c o m

Phone: (208) 333-8506 | Fax: (208) 343-3246 | Boise, Idaho 83702

In the Alaska Center | 1020 W. Main Street, Suite 400 | Fourth Floor

RS | **RUNFT & STEELE**
LAW OFFICES, PLLC

John L. Runft | Jon M. Steele | Karl J.F. Runft

(date)

(name)

(address)

Via (e-mail, U.S. Mail, fax)

Re: *Engagement Letter for Legal Services*

Dear ____:

Pursuant to our meeting and the understanding reached in my office on _____, 201_, this letter confirms the terms and conditions of an agreement for the engagement of this law firm ("we," "us") as legal counsel to represent you and your company, Chinook Equipment, Inc., you ("you" or "your"). You are the sole owner of _____, Inc, an Idaho limited liability company (No. _____) (the "Company").

Initially, the scope of our legal services to you (Scope of Work) will be to provide counseling, advice, and guidance to you regarding matters that arise, or may arise, from, or related to your business matters and plans for a period of at least one year from the date of this letter in the discretion of the law firm based on rendition of said services. Mr. / Ms. _____ of the law firm will be the lead counsel in providing these services to you. Unless otherwise agreed, these services will not include certain specific matters such as (the formation of new entities, drafting of new agreements and contracts), but will entail the review of exiting documents, contracts, etc., and advice and guidance regarding same.

In the event litigation (including administrative proceedings) occurs involving you or your interests, and you desire us to represent you in any such litigation, then, in that event, a new agreement for legal services must be negotiated and entered into.

Regarding our legal fees, this confirms that we have agreed to a Flat, fixed fee retainer in the sum of _____ Thousand Dollars (\$,000), payable upon your execution and remittance of this Engagement Letter. For this law firm's legal services beyond the above described Scope of Work, we will either charge or regular legal fee of \$ _____ per hour or we will enter into another Flat fee arrangement for anther definitive Scope of Work. In addition to payment of attorney fees, you will be responsible for reimbursing our firm for out-of pocket disbursements

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Phone: (208) 333-8506 | Fax: (208) 343-3246 | Boise, Idaho 83702

In the Alaska Center | 1020 W. Main Street, Suite 400 | Fourth Floor

(client name)

Engagement Letter

Date: _____. 20__

Page 2 of 4

as detailed in the Appendix to this Engagement letter. Further terms of our representation are set forth in the Appendix to this letter.

This confirms that we will report to you in all matters relevant to our provision of our legal services under this agreement.

We look forward to continuing to work with you and appreciate your confidence in entrusting to us with your representation.

We request that you sign, date, scan and remit a counterpart of this letter, which I have signed, to acknowledge your acceptance of the foregoing terms.

Sincerely,

(name)

(law firm)

Agreed and Accepted

By _____ (date) _____
(name)

Appendix to Engagement Letter

Dated: _____, 20____

Between (*law firm*)

And

(*Company*)

Disbursements: You will be jointly responsible for reimbursing the Law Firm for its out-of-pocket expenses incurred on your behalf in the course of providing legal services pursuant to this engagement. Such costs may include, without limitation, long distance phone calls, travel, telefax, bulk or large item photocopying, computerized legal research, delivery services, filing fees, appraisals, document preparation and document storage, and other incidental expenses.

Fees and Billing. In the event at any time our agreement for legal fees entails per hour billings, our statements, which are rendered monthly, are payable upon receipt and prompt payment is a requirement for our continued representation. We reserve the right to charge a late payment fee at the rate of 1% per month (12% annual percentage rate) on any statement not paid within 30 days of its date. You will also be responsible for reimbursing us for any collection costs, including attorneys' fees, incurred in collecting amounts you owe us.

Termination of Representation: Unless previously terminated, or otherwise agreed in writing, our representation of you in this matter will terminate upon the Law Firm's sending to you a letter notifying you of the termination. You may terminate this Law Firm's representation of you at any time. We may terminate our representation of you for any reason consistent with the applicable rules of professional conduct, including breach of the terms of this engagement letter. Following such termination, any otherwise non-public information you have supplied to us which is retained by us will be kept confidential in accordance with applicable rules of professional conduct.

Retention and Disposition of Documents: In the event of any termination of our representation, you acknowledge our right to retain copies of all files and other documents relating to matters as to which we are then or have previously represented you as a matter of record in the law firm. Upon Termination all of your original documents in our possession will be returned to you. Subject to the foregoing, for various reasons, including the minimization of unnecessary storage expenses, we reserve the right to destroy or otherwise dispose of any

(client name)

Engagement Letter

Date: _____. 20__

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documents or other materials retained by us within a reasonable time, whether during or after the termination of the engagement. This Law Firm's own files pertaining to the matter will be retained by the Law Firm. These files include, for example, Law Firm administrative records, time and expense reports, personnel and staffing materials, and credit and accounting records; and internal lawyers; work product such as drafts, notes, internal memoranda, and legal and factual research, including investigative reports, prepared by or for the internal use of lawyers.

Responses to Auditor's Requests. This Law Firm will strictly conform in all responses to any requests from your auditors for information to the American Bar Association Statement of Policy Regarding Lawyers' Responses to Auditors' Requests for Information – December 1975 which was negotiated between the ABA and the American Institute of Certified Public Accountants. Opinions predicting the outcome of litigation will only be provided when the outcome can be characterized as "probable" or "remote" (as those terms are defined in the ABA Statement).

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February 27, 2014

Rod and Carolyn _____
_____, Auto, LLC
1665 S. _____, Ave.
_____, Idaho 83____

Re: Engagement Letter for Legal Services

Dear Mr. and Mrs. _____:

We are pleased to have the opportunity to provide legal services to you. The purpose of this letter is to set forth the terms and conditions of the engagement of this law firm. As we discussed in our meeting on _____, 20____, we will provide our legal services to assist you in your efforts through your limited liability company, _____ Auto, LLC, to purchase the assets of _____'s Auto Repair, Inc., including the use of the name, "_____'s Auto Repair," from the Mr. _____, the sole owner of _____'s Auto Repair, Inc. Included in the scope of our representation will be assisting you with finalizing internal documents of your documents in _____ Auto, LLC, including the Operating Agreement, and preparing and reviewing the documents related to the purchase of the assets of, and the lease of the premises of, _____'s Auto Repair, Inc. The above tasks are referred to as the "Scope of Work" for the purposes of the "Flat" legal fee described below, which will be deemed completed upon the completion or rejection of the purchase of said assets of _____'s Auto Repair, Inc. This confirms that we will report to you in all matters relevant to our provision of our legal services under this agreement.

It is our understanding that you are working with Mr. _____, CPA, of the accountancy firm of _____ with respect to the accounting and fiscal aspects of this business venture and that we shall confer with Mr. _____ in all matters related to the anticipated transaction. This confirms that you are the sole owners of _____ Auto, LLC.

This confirms that in the unfortunate circumstances of irreconcilable differences ever arising between or among you individually and / or _____ Auto, LLC, which is a separate individual at law, we would be faced with a conflict of interest requiring our resignation as counsel to all concerned.

In the event litigation (including administrative proceedings) occurs, and you desire us to represent you in any such litigation, then, in that event, a new agreement for legal services must be negotiated and entered into.

Regarding our legal fees, this confirms that we have agreed to a Flat, fixed fee retainer in the sum of _____ Thousand _____ Hundred (_____), payable at the rate of \$ _____ per Month commencing _____, 20____, for the above described Scope of Work. For this law firm's legal services beyond the above described Scope of Work, we will either charge or regular legal fee of \$ _____ per hour or we will enter into another Flat fee arrangement for a definitive Scope of Work.

Rod and Carolyn _____
Auto, LLC
Engagement Letter
Page 2 of 2

In addition to payment of attorney fees, the Company will be responsible for reimbursing our firm for disbursements as detailed in the Appendix to this Engagement letter. Further terms of our representation are set forth in the Appendix to this letter.

We look forward to continuing to work with you and appreciate your confidence in entrusting to us the representation of the Company.

Please sign, date, and return the enclosed copy of this letter to acknowledge your acceptance of the foregoing terms.

Please call if you have any questions before signing below.

Sincerely,

(name)
(name of law firm)

The foregoing terms and conditions are hereby agreed and accepted:

_____ Auto, LLC

By: _____ Dated: _____
Mr. _____, individually and as a Member
of _____ Auto, LLC

By: _____ Dated: _____
Mrs. _____, individually and as a Member
of _____ Auto, LLC

Appendix to Engagement Letter
Dated_____, 20____
Between (name of law firm) and
_____, Auto, LLC
_____, Ave.
_____, Idaho 83____

Disbursements. You will be responsible for reimbursing the Law Firm for its out-of-pocket expenses incurred on your behalf ("disbursements") from any recovery in this matter. Such disbursements may include, without limitation, long distance phone calls, travel, telefax, photocopying, computerized legal research, delivery services, filing fees, deposition costs, expert witness fees and charges, document preparation and document storage, court costs and transcripts and other incidental expenses, such as overtime, secretarial or word processing assistance incurred due to your specific time constraints.

Fees and Billing. Our statements, which are generally rendered monthly, are payable upon receipt and prompt payment is a requirement for our continued representation. We reserve the right to charge a late payment fee at the rate of 1% per month (12% annual percentage rate) on any statement not paid within 30 days of its date. You will also be responsible for reimbursing us for any collection costs, including attorneys' fees, incurred in collecting amounts you owe us.

Payment and Distribution of Recovery Proceeds: Payment of any and all recovery proceeds shall be paid to you and this Law Firm jointly and delivered or sent to this Law Firm for distribution in accordance with the terms of this engagement letter. Any check received by the Law Firm as and for recovery proceeds shall be endorsed by both you and the law firm and promptly negotiated and the proceeds deposited in the Law Firm's attorney trust account for distribution in accordance with the terms of this engagement letter.

Termination of Representation; Retention and Disposition of Documents. Unless previously terminated, or otherwise agreed in writing, our representation of you in this matter will terminate upon the resolution of this matter and The Law Firm's sending to you a letter notifying you of the final resolution of this matter and, in the event of a recovery, a final statement and accounting for services rendered and disbursements made. At your request, your papers and property will be returned to you promptly upon such final resolution.

You may terminate this Law Firm's representation of you at any time. We may terminate our representation of you for any reason consistent with the applicable rules of professional conduct, including breach of the terms of this engagement letter. Following such termination, any otherwise non-public information you have supplied to us which is retained by us will be kept confidential in accordance with applicable rules of professional conduct. In the event of any termination of our representation, you acknowledge our right to retain all files and other documents relating to matters as to which we are then or have previously represented you as a lien pending against any recovery in this matter for our receipt of payment in full for our legal services and disbursements. Subject to the foregoing, for various reasons, including the minimization of unnecessary storage expenses, we reserve the right to destroy or otherwise dispose of any documents or other materials retained by us within a reasonable time, whether during or after the termination of the engagement.

This Law Firm's own files pertaining to the matter will be retained by the Law Firm. These files include, for example, Law Firm administrative records, time and expense reports, personnel and staffing materials, and credit and accounting records; and internal lawyers' work product such as drafts, notes, internal memoranda, and legal and factual research, including investigative reports, prepared by or for the internal use of lawyers.

Responses to Auditor's Requests. This Law Firm will strictly conform in all responses to any requests from your auditors for information to the American Bar Association Statement of Policy Regarding Lawyers' Responses to Auditors' Requests for Information – December 1975 which was negotiated between the ABA and the American Institute of Certified Public Accountants. Opinions predicting the outcome of litigation will only be provided when the outcome can be characterized as "probable" or "remote" (as those terms are defined in the ABA Statement).

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(date)

(Name and address of client(s))

Re: Engagement Letter for Legal Services

Dear _____:

We are pleased to have the opportunity to provide legal services to _____. (Purpose and scope of representation, e.g. – *which will include the formation and representation of _____, LLC (and _____ Holding, LLC) (“the Company Companies”)*). The purpose of this letter is to confirm the terms and conditions of the engagement of this law firm to provide legal services to you and the Company (*Companies*).

This confirms that we have agreed to represent you and (*names of individuals*) jointly in the formation of the Company (*Companies*). After the formation of the Company (*Companies*), our representation will be solely on behalf of the Company (*Companies*) and on behalf of you jointly, as members, and not individually. In other words, we cannot represent the interests of any one member in conflict with the joint interest of all of the members or of the Company (*Companies*).

Regarding our legal fees, this confirms that in consideration of your payment of the fixed fee of ____ Thousand Dollars (\$--000) , we have agreed to consult with you regarding the formation of the Company (*Companies*), draft and finalized the Articles of Organization and the Operating Agreement(s), and _____. (or *-This confirms that you have paid the sum of \$_____ to date for legal consultation relating to the formation of the Companies.*). All (*further*) legal fees and out of pocket costs will be billed on a monthly basis as set forth in the Appendix to this Engagement Letter.)

For legal services rendered, if any, beyond those services described in the above paragraph, we will bill you for said further legal services at our standard hourly rates for the law firm’s attorneys, which are as follows: \$_____ for attorney _____; \$150 for attorney _____, with all paralegal services included in said attorney fees. Mr. / Ms. _____ will be the lead attorney in this matter. Further terms of our representation are set forth in the Appendix.

We look forward to working with you and appreciate your confidence in entrusting us with your representation in this matter.

Please sign, date, and return the enclosed copy of this letter to acknowledge your acceptance of the foregoing terms.

November 19, 2019

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Please call if you have any questions.

Sincerely,

(*name*)

(*law firm name*)

Agreed and Accepted

_____, LLC (*and* _____ LLC, jointly)

By: _____
Mr. _____ Member

Dated: _____

By: _____
Mr. _____, Member

Dated: _____

By: _____
Mr. _____, Member

Dated: _____

Mr. _____, Individually

Dated: _____

Ms. _____, Individually

Dated: _____

Mr. _____, Individually

Dated: _____

Appendix to Engagement Letter for Legal Services

_____ 20____
(name of law firm)
and
_____, LLC
_____, LLC
and
Mr. _____
Ms. _____
Mr. _____

Reimbursement. You will be responsible for reimbursing us for our out-of-pocket expenses incurred on your behalf. These may include, without limitation, long distance phone calls, travel, telefax, photocopying, computerized legal research, delivery services, filing fees, deposition costs, expert witness fees and charges, document preparation and/or document, court costs, and transcripts and other incidental expenses, such as overtime secretarial or word processing assistance incurred due to your specific time constraints.

Fees and Billing. Our statements, which are generally rendered monthly, are payable upon receipt and prompt payment is a requirement for our continued representation. We reserve the right to charge a late payment fee at the rate of 1% per month (12% annual percentage rate) on any statement not paid within 30 days of its date. You will also be responsible for reimbursing us for any collection costs, including attorneys' fees, incurred in collecting amounts you owe us.

Termination of Representation; Retention and Disposition of Documents. You may terminate our representation at any time. We may terminate our representation of you for any reason consistent with the applicable rules of professional conduct, including nonpayment of fees or a delay of more than ten days in the payment of any required retainer. Unless previously terminated, our representation will terminate upon our sending to you our final statement for services rendered. Following such termination, any otherwise non-public information you have supplied to us which is retained by us will be kept confidential in accordance with applicable rules of professional conduct. At your request, your papers and property will be returned to you promptly upon receipt of payment for outstanding fees and costs. Our own files pertaining to the matter will be retained by the firm. These firm files include, for example, firm administrative records, time and expense reports, personnel and staffing materials, and credit and accounting records; and internal lawyers' work product such as drafts, notes, internal memoranda, and legal and factual research, including investigative reports, prepared by or for the internal use of lawyers.

You will be responsible for our fees for services and expenses incurred prior to termination, including those incurred in transferring any matters to your new counsel. In the event of any termination of our representation, you acknowledge our right to retain all files and other documents relating to matters as to which we are then or have previously represented you as a lien pending our receipt of payment in full for our services and disbursements. Subject to the foregoing, for various reasons, including the minimization of

unnecessary storage expenses, we reserve the right to destroy or otherwise dispose of any documents or other materials retained by us within a reasonable time, whether during or after the termination of the engagement.

Responses to Auditor's Requests. We will strictly conform in all responses to any requests from your auditors for information to the American Bar Association Statement of Policy Regarding Lawyers' Responses to Auditors' Requests for Information, December, 1975, which was negotiated between the ABA and the American Institute of Certified Public Accountants. Opinions predicting the outcome of litigation will only be provided when the outcome can be characterized as "probable" or "remote" (as those terms are defined in the ABA Statement).

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[Date]

_____, Managing Member
_____, LLC

Re: Engagement Letter for Legal Services

Dear Mr. _____:

We are pleased to have the opportunity to provide legal representation of _____, LLC (the "Company"). The purpose of this letter is to confirm the terms and conditions of the engagement of this law firm to provide legal services to the Company, in accordance with the understandings reached (in our meeting in our offices) (by our telephone conversations) with you (and your spouse _____). This law firm is hereby engaged to represent the Company, the entity, and its Members as "Members" of the entity, but will be representing the Members in their individual capacities. That is to say, we will not be in a position to represent the individual interests of any Member over the interests of the Company or any other Member. Accordingly, this letter is addressed to you in your capacity, as the Managing Member of the Company.

This scope of this law firm's representation of the Company has and will continue to encompass assistance in all legal business matters of the Company, as may be requested by you as the Managing Member from time to time, including, but not limited to, matters involving business affairs and transactions, contracts, legal financial matters, commercial matters, Company organization and procedures, compliance with administrative agencies, and litigation. Separate arrangements must be made between this law firm and the Company for representation of the Company in any litigation (including administrative proceedings).

In our discretion, we reserve the right to retain, subject to your approval, outside legal counsel to work with us in certain matters of specialty that may arise, such as patent law, securities law, etc. Of course, should the Company ask us to perform work respecting any matter not within an area of law in which we normally practice and as a result we feel the matter would be appropriately handled by legal counsel specializing in such matters, we will so advise the Company and assist the Company in finding counsel which we believe is qualified to handle the matter.

As an initial task, the Company has requested our firm to form and register the Company with the Idaho Secretary of State and to prepare an Operating Agreement for the Company to be signed by the Members and their spouses, all of whom will be involved in the business of the Company. The attorney fee for this initial task will be the sum of \$500.

(Name)

November 19, 2019

Page 2 of 5

Legal fees for services rendered beyond this initial task will be billed at the law firm's standard hourly rates as set forth below.

The law firm's standard hourly fee rates for this firm's attorneys, range from \$____ per hour to \$____ per hour for all work performed and \$75 per hour for paralegal services. Mr. / Ms. _____, whose hourly rate is \$____ per hour, will be the member of the law firm who will be the responsible, lead attorney in representing the Company. This confirms that the Company [will pay – has paid] an initial one time retainer in the sum of \$____ [and that the terms and conditions expressed herein were agreed to and made effective as of _____]. (or in alternative for "rolling" retainer: [A retainer in the sum of \$_____ will be paid by you at the outset of this law firm's representation and this retainer will be replenished each month against this firm's billing statements for services rendered and costs incurred, so that each month begins with all fees and costs paid and the retainer in place.]

In addition to payment of attorney fees, the Company will be responsible for reimbursing our firm for disbursements as detailed in the Appendix to this Engagement letter. Further terms of our representation are set forth in the Appendix to this letter.

We look forward to continuing to work with you and appreciate your confidence in entrusting to us the representation of the Company.

Please sign, date, and return the enclosed copy of this letter to acknowledge your acceptance of the foregoing terms.

Please call if you have any questions before signing below.

Sincerely,

(name of attorney)

(name of law firm)

The foregoing terms and conditions are hereby agreed and accepted

_____, LLC.

By: _____
_____, Managing Member

Dated: _____

(Name)

November 19, 2019

Page 3 of 5

Personal Guarantee:

Payment of legal fees and costs as set forth in this engagement letter and the attached appendix is hereby personally guaranteed by _____, individually.

[name of _____, Individual guarantor]

Dated: _____

Appendix to Engagement Letter

Dated _____, 20____
(*name of law firm*) and
_____, LLC.

1. *Reimbursements.* You will be responsible for reimbursing us for our out-of-pocket expenses incurred on your behalf. These may include, without limitation, long distance phone calls, travel, telefax, photocopying, computerized legal research, delivery services, filing fees, deposition costs, expert witness fees and charges, document preparation and/or document storage, court costs, and transcripts and other incidental expenses, such as overtime secretarial or word processing assistance incurred due to your specific time constraints.

2. *Fees and Billing.* Our statements, which are rendered monthly, are payable upon receipt and prompt payment is a requirement for our continued representation. We reserve the right to charge a late payment fee at the rate of 1% per month (12% annual percentage rate) on any statement not paid within 30 days of its date. You will also be responsible for reimbursing us for any collection costs, including attorneys' fees, incurred in collecting amounts you owe us. Our standard fee rates for attorneys of the law firm are as follows: John L. Runft, \$300 per hour; Jon Steele, \$250 per hour; Associate Lawyers \$150 per hour. Paralegal time for Karissa Armbrust is \$50 per hour.

3. *Termination of Representation; Retention and Disposition of Documents.* You may terminate our representation at any time. We may terminate our representation of you for any reason consistent with the applicable rules of professional conduct, including nonpayment of fees or a delay of more than ten days in the payment of any required retainer. Unless previously terminated, our representation will terminate upon our sending to you our final statement for services rendered. Following such termination, any otherwise non-public information you have supplied to us which is retained by us will be kept confidential in accordance with applicable rules of professional conduct. At your request, your papers and property will be returned to you promptly upon receipt of payment for outstanding fees and costs. Our own files pertaining to the matter will be retained by the firm. These firm files include, for example, firm administrative records, time and expense reports, personnel and staffing materials, and credit and accounting records; and internal lawyers; work product such as drafts, notes, internal memoranda, and legal and factual research, including investigative reports, prepared by or for the internal use of lawyers.

You will be responsible for our fees for services and expenses incurred prior to termination, including those incurred in transferring any matters to your new counsel. In the event of any termination of our representation, you acknowledge our right to retain all files and other documents relating to matters as to which we are then or have previously represented you as a lien pending our receipt of payment in full for our services and disbursements. Subject to the foregoing, for various reasons, including the minimization of unnecessary storage expenses, we reserve the right to destroy or otherwise dispose of any documents or other materials retained by us within a reasonable time, whether during or after the termination of the engagement.

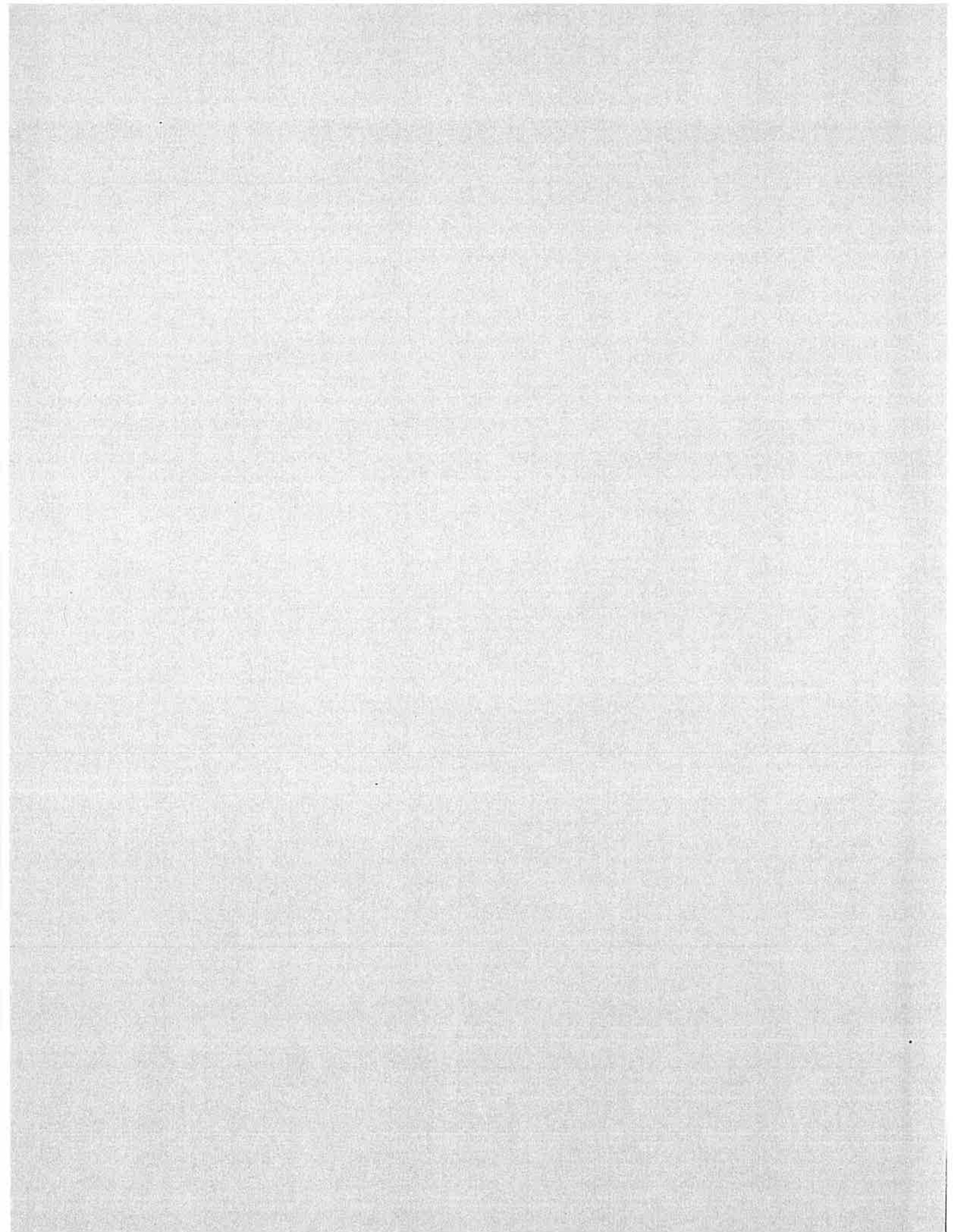
After any such termination, changes may occur in applicable laws or regulations that could have an impact upon matters previously handled by us. Unless the Company actually engages us, after termination of our engagement as set forth herein, to provide additional advice on issues arising from such matters, following such termination our firm (i) has no continuing obligation to advise the Company with respect to future legal developments or to make recommendations that any documents we have prepared be revised to reflect such developments and (ii) will no longer undertake responsibilities or duties on the Company's behalf, and the Company will have no expectation of any duties to be performed by us in the future

4. Client Responsibilities. The Company agrees to cooperate fully with us and to provide promptly all information known or available to the Company relevant to our representation. The Company also agrees to pay our statements for services and expenses in accordance with paragraph 2 above.

5. Possible Conflicts. Of course, our firm represents other companies and individuals. It is possible that during the time we are representing the Company some of our present or future clients will have disputes or transactions with the Company. The Company agrees that we may continue to represent or may undertake in the future to represent existing or new clients in any matter that is not substantially related to or in conflict with our work for the Company. We also agree that if any dispute arises between the Company and any one or more of such other clients, or if circumstances arise from which a reasonable person could conclude that a dispute is likely to arise, our firm will decline proffered employment with respect to such dispute or likely dispute if, in the exercise of our independent professional judgment, either the Company or such other client will be or is likely to be adversely affected by the acceptance of the proffered employment. The Company should know that, in similar engagement letters with some of our other clients, we have asked for similar agreements to preserve our ability to represent the Company.

6. Responses to Auditor's Requests. We will strictly conform in all responses to any requests from your auditors for information to the American Bar Association Statement of Policy Regarding Lawyers' Responses to Auditors' Requests for Information – December 1975 which was negotiated between the ABA and the American Institute of Certified Public Accountants. Opinions predicting the outcome of litigation will only be provided when the outcome can be characterized as "probable" or "remote" (as those terms are defined in the ABA Statement).

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Interpretation and Construction of statutes (and constitutional provisions)

Regarding interpreting statutory language, the Idaho Supreme Court has made it clear that the plain language of a statute must first be considered before engaging in statutory construction to determine legislative intent. In, *Eller v. Idaho State Police*, Docket Nos. 45698 & 45699, (May 24, 2019) the Idaho Supreme Court most recently reiterated this rule:

Statutory interpretation requires this Court to first consider the plain language of the statute, with the literal words as the best guide to determining legislative intent. *Marquez v. Pierce Painting, Inc.*, 164 Idaho 59, ___, 423 P.3d 1011, 1015–16 (2018). Idaho law provides: “Where a statute is clear and unambiguous, the expressed intent of the legislature shall be given effect without engaging in statutory construction.” *Id.* (citation and corrections omitted). In addition, where two statutes conflict, courts should apply the more recent and more specifically applicable statute. See *Valiant Idaho, LLC v. JV L.L.C.*, 164 Idaho 280, ___, 429 P.3d 168, 177 (2018) (quoting *George W. Watkins Family v. Messenger*, 118 Idaho 537, 797 P.2d 1385 (1990)); *Johnson v. Boundary Sch. Dist. No. 101*, 138 Idaho 331, 335, 63 P.3d 457, 461 (2003).

Idaho Code TITLE 73

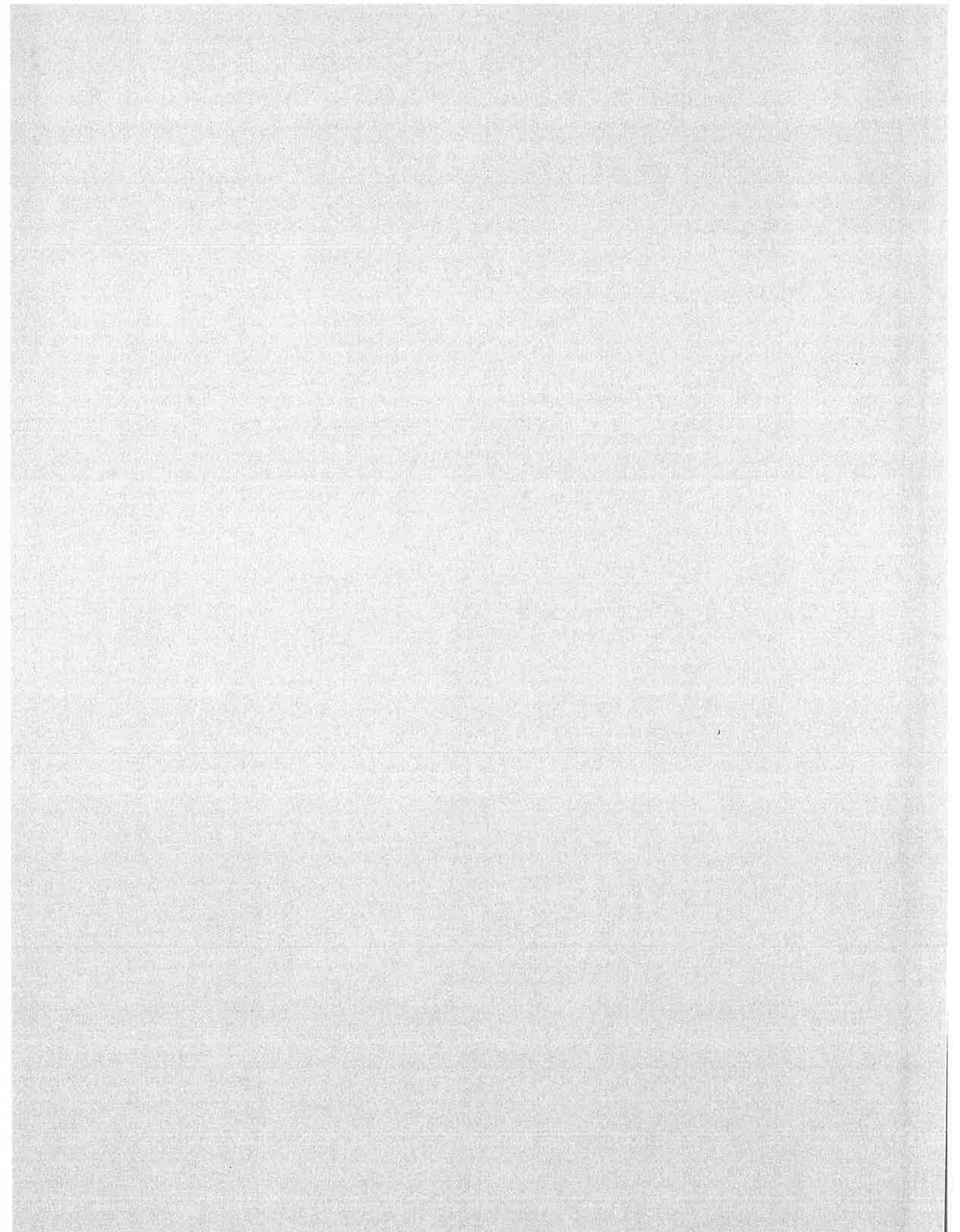
CONSTRUCTION OF STATUTES

73-113. CONSTRUCTION OF WORDS AND PHRASES. (1) The language of a statute should be given its plain, usual and ordinary meaning. Where a statute is clear and unambiguous, the expressed intent of the legislature shall be given effect without engaging in statutory construction. The literal words of a statute are the best guide to determining legislative intent.

(2) If a statute is capable of more than one (1) conflicting construction, the reasonableness of the proposed interpretations shall be considered, and the statute must be construed as a whole. Interpretations which would render the statute a nullity, or which would lead to absurd results, are disfavored.

(3) Words and phrases are construed according to the context and the approved usage of the language, but technical words and phrases, and such others as have acquired a peculiar and appropriate meaning in law, or are defined in the succeeding section, are to be construed according to such peculiar and appropriate meaning or definition.

A couple of recent, well researched articles on the subject of statutory interpretation are: “*Can a Statute Have More Than One Meaning?*” (New York University Law Review, 2019), which examines whether statutory language can mean different things in different cases, and “*High-Stakes Interpretation*,” (Michigan Law Review, 2018), which explores why courts often interpret text differently when deciding high-stakes cases.





Idaho Statutes

TITLE 10
ISSUES, TRIAL AND JUDGMENT IN CIVIL ACTIONS
CHAPTER 12

DECLARATORY JUDGMENTS

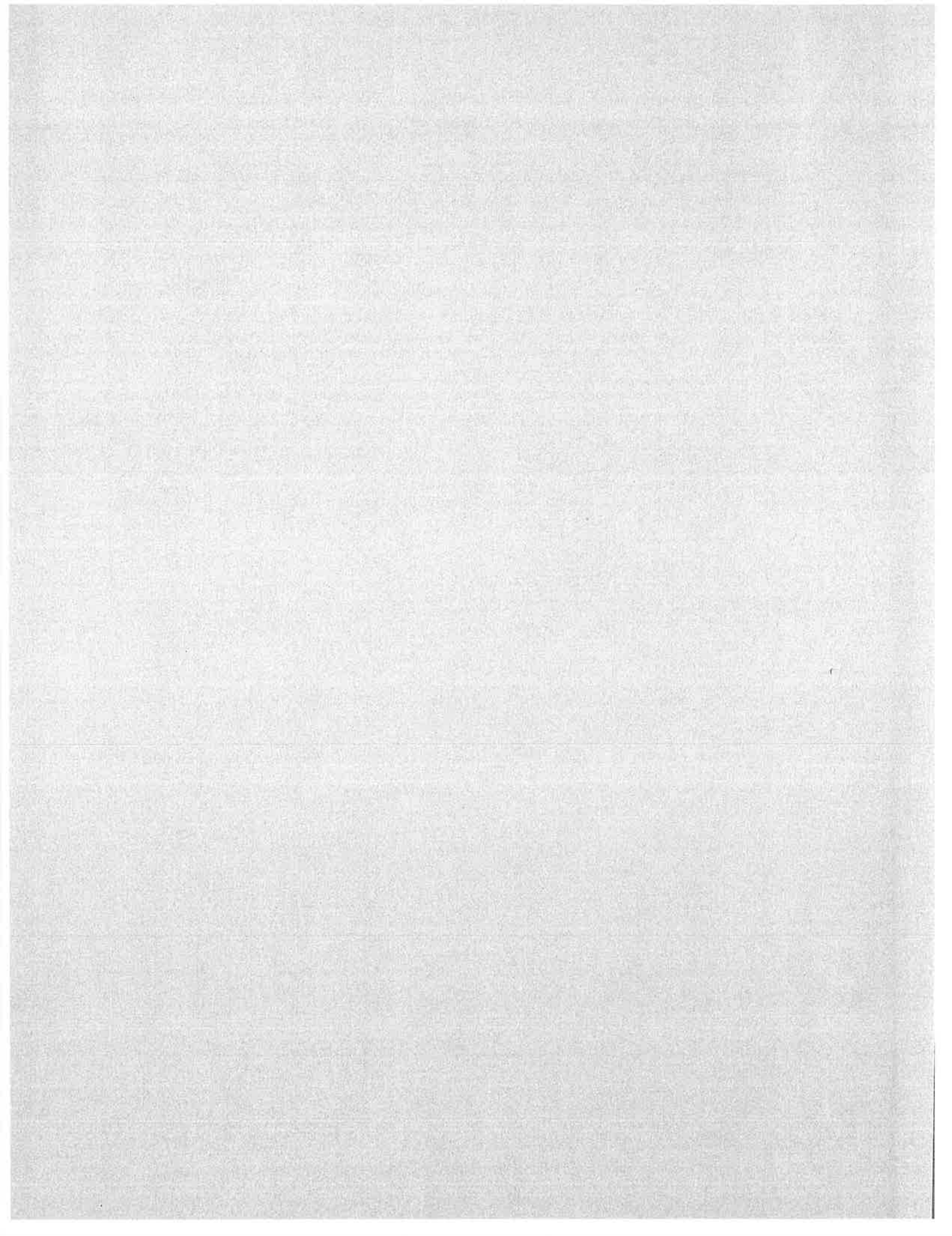
10-1201. DECLARATORY JUDGMENTS AUTHORIZED – FORM AND EFFECT. Courts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations, whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect, and such declarations shall have the force and effect of a final judgment or decree.

History:

[10-1201, added 1933, ch. 70, sec. 1, p. 113.]

How current is this law?

Search the Idaho Statutes and Constitution



The Doctrine of "Quasi Estoppel" – preclusion from asserting positions contrary to positions previously taken to the detriment of the other party.

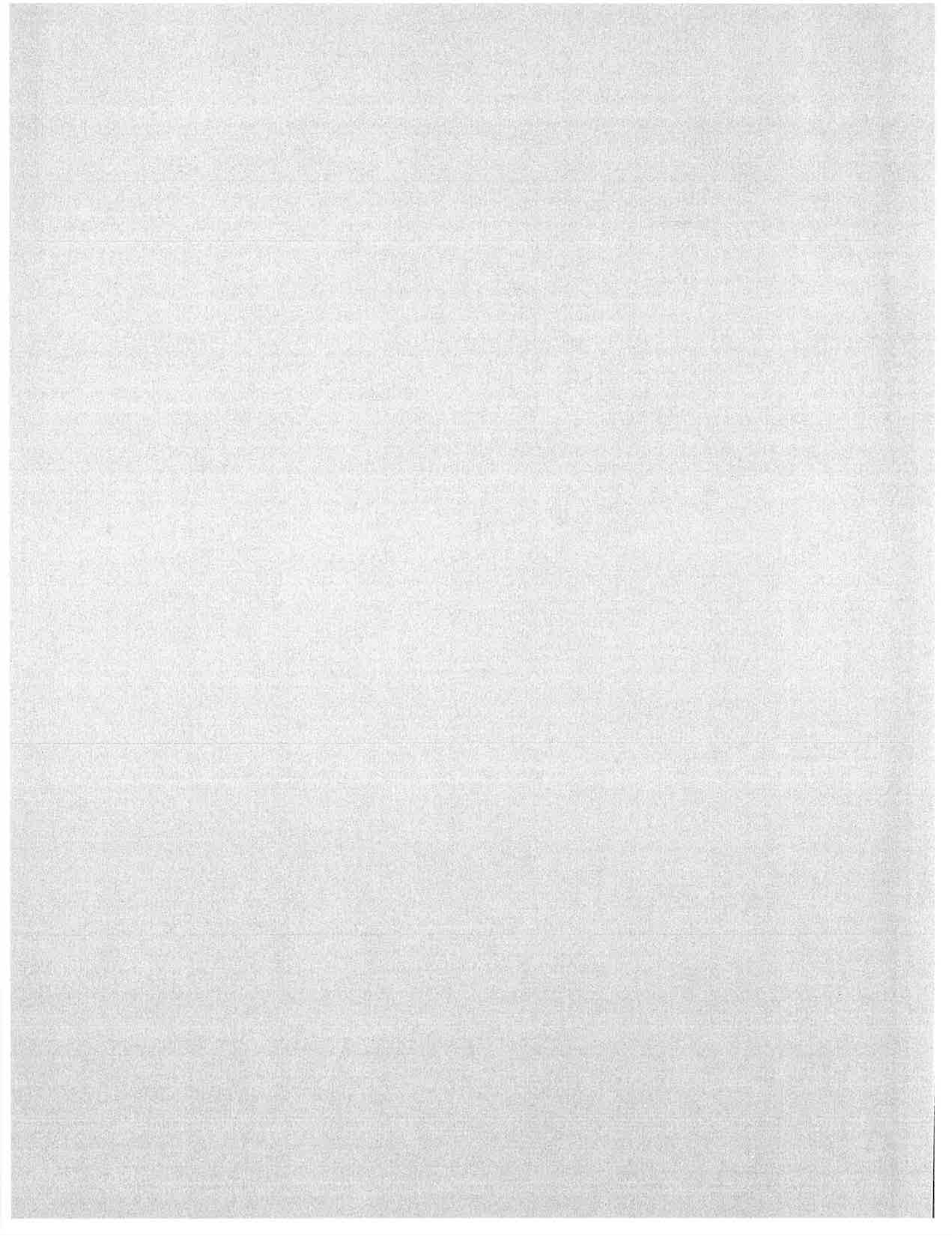
This doctrine must be distinguished from the assertion of alternative positions – e.g. asserting remedies for damages or specific performance, which involves an election.

The leading Idaho case is *Vawter v. United Parcel Service, Inc.*, 155 Idaho 903, 318 P.3d 893, (2014), wherein the Idaho Supreme Court held in this regard:

"The doctrine of quasi-estoppel " prevents a party from asserting a right, to the detriment of another party, which is inconsistent with a position previously taken." *Atwood v. Smith*, 143 Idaho 110, 114, 138 P.3d 310, 314 (2006) (quoting *C & G, Inc. v. Canyon Highway Dist. No. 4*, 139 Idaho 140, 144, 75 P.3d 194, 198 (2003)). Quasi-estoppel stands for the proposition that " ' one cannot blow both hot and cold.' " *KTVB, Inc. v. Boise City*, 94 Idaho 279, 281, 486 P.2d 992, 994 (1971) (quoting *Godoy v. Hawaii*, 44 Haw. 312, 354 P.2d 78 (1960)).

This doctrine applies when: (1) the offending party took a different position than his or her original position, and (2) either (a) the offending party gained an advantage or caused a disadvantage to the other party; (b) the other party was induced to change positions; or (c) it would be unconscionable to permit the offending party to maintain an inconsistent position from one he or she has already derived a benefit or acquiesced in. *C & G, Inc.*, 139 Idaho at 145, 75 P.3d at 199. Estoppel theories generally present mixed questions of law and fact. *The Highlands, Inc. v. Hosac*, 130 Idaho 67, 69, 936 P.2d 1309, 1311 (1997) (citations omitted). Because mixed questions of law and fact are primarily questions of law, this Court exercises free review. *Id. Allen v. Reynolds*, 145 Idaho 807, 812, 186 P.3d 663, 668 (2008)."

Vawter v. United Parcel Service, Inc., 155 Idaho 903, 318 P.3d 893, 900-901 (2014)



NOTE REGARDING PRESERVING THE CONFIDENTIALITY OF THIS COMMUNICATION

Idaho Rule of Civil Procedure 26(b)(4)(A)(1) protects your drafts and communications with me, provided that you are careful in not considering or relying upon statements made by me in forming your opinions. Your communications with me are protected unless you consider or rely on facts, data, or assumptions communicated by me in forming your opinions. Therefore please do not rely on anything contained in this communication in forming your opinions to be expressed in this case, but rather consider only the facts and data obtained from sources other than me in forming your opinions.

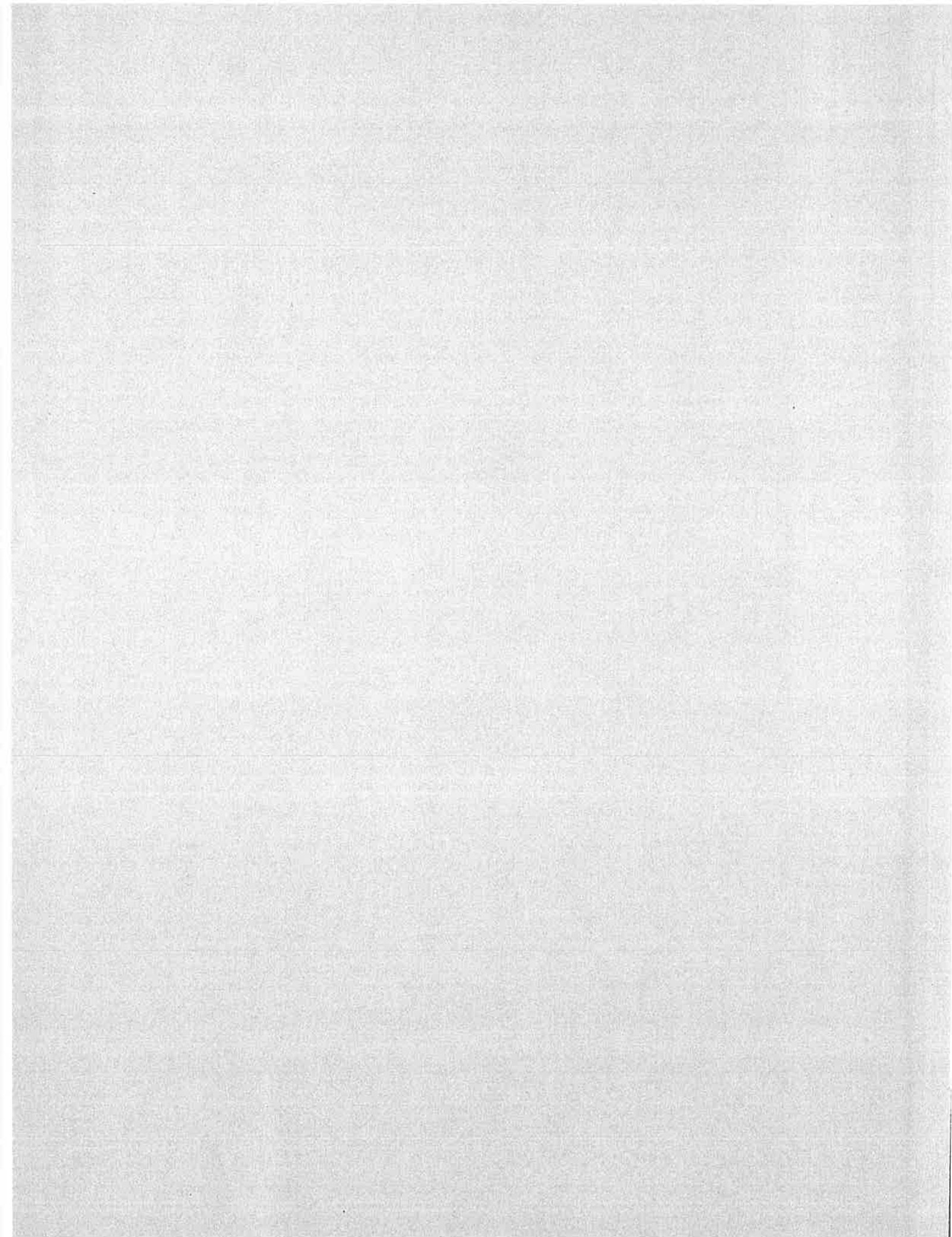
Idaho Rule of Civil Procedure 26(b)(4)(A)(2) states as follows:

(2) Draft Disclosures and Draft Reports. Any draft disclosure or draft report prepared in anticipation of litigation by any witness disclosed under 26(b)(4)(A)(1)(i) is protected from disclosure.

(3) Communications Between a Party's Attorney and Expert Witness. Communications between the party's attorney and any witness required to be disclosed under 26(b)(4)(A)(1)(i), regardless of the form of the communications, is protected from disclosure, except to the extent that the communications:

- (i) State the amount of compensation for the expert's services;
- (ii) Identify the facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed; or
- (iii) Identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions to be expressed.

Based upon this rule, you should not consider anything in this letter for purposes of forming your opinions to be expressed you should **segregate this and all similar communications from the materials contained in your file when producing your file in discovery, at a deposition, or at trial.**



Plaintiff's Motion in Limine

In the _____ Court of _____ County, _____

_____)	
Plaintiff)	
)	
vs.	)	Case No. _____
)	
_____)	
Defendant)	

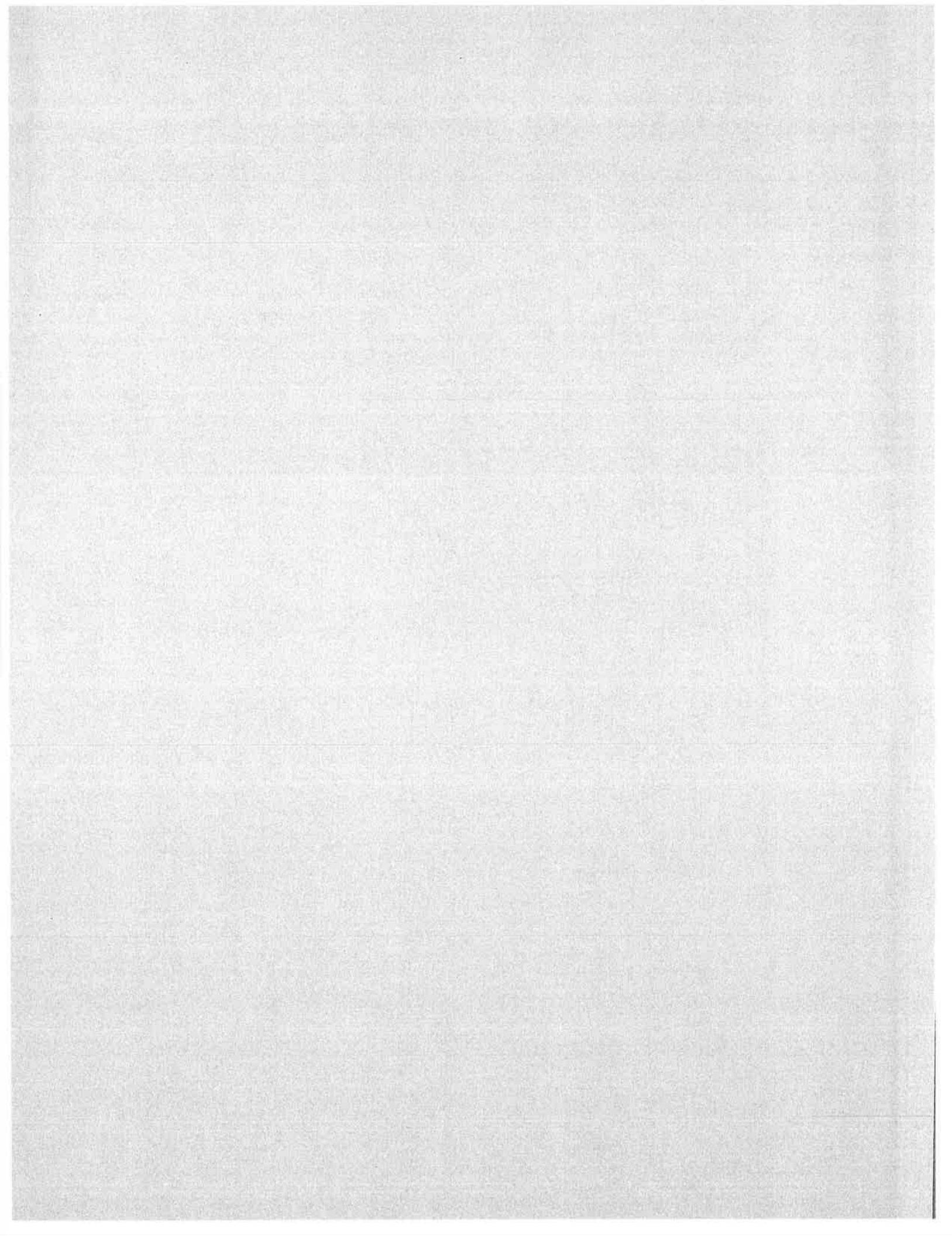
PLAINTIFF'S MOTION IN LIMINE

COMES NOW the plaintiff, by and through his attorneys of record, and move the court for an Order In Limine to prohibit defendant, and its counsel, or any of its witnesses from mentioning or asking questions, either directly or indirectly, before the jury or within the hearing of the jury, without the prior approval of this court, the following matters:

1. Testimony relating to general industry practice at the time of manufacture of the gas grill in question in 1993 with respect to the placement of the two safety mechanisms in question on propane gas grills.
2. The fact that the Model Number _____ Gas Grill involved in this case was manufactured in accordance with or complied with various voluntary industry standards including, but not limited to, ANSI Standards.
3. Any testimony relating to industry standards including ANSI Standards applicable to gas barbecue grills such as the one involved in this case or the modification or change of those standards or the participation by the defendant in those changes or the purpose or reason that defendant participated in the changing of those standards.
4. Testimony as to reasons the defendant did not employ the two safety devices on its product in 1993 or as to the reasonableness of the defendant's actions in not equipping its gas grills with the safety devices until 1995.
5. The introduction of "state of the art" evidence as defined by Section 537.764 R.S.Mo, 1994, as amended.
6. The fact that the plaintiff had insurance with _____ Insurance Company or that _____ Insurance Company has a subrogation interest in this litigation.
7. The fact plaintiff has stricken various counts and allegations from his petition or dismissed without prejudice various counts of his petition.
8. Testimony by defendant's expert witness, _____, that the gas grill burner was operating, just prior to the time of the fire, in a manner different than that testified to by the three eyewitnesses to support his opinion that there was a blockage or obstruction of the venturi tube of the gas grill prior to the fire in question.
9. Evidence or testimony by defendant's expert witness, _____, that the plaintiff was contributorily at fault because he violated the instruction in the instruction manual by not cleaning the venturi tubes of the grill after the grill was initially ignited on the day of the fire.
10. Evidence or testimony by defendant's expert witness, _____, that the plaintiff was contributorily at fault because he violated the portion of the instruction manual for the gas grill relating to "Grill shall not be located under unprotected overhead (enclosed carport, garage, porch, patio) made of combustible construction," "Grill is for outdoor use only," or "Never operate in enclosed space, garage, or building."
11. That plaintiff was in any way negligent or at fault or contributed to his damages in this case.

12. Evidence regarding possible causes of the fire to which neither of defendant's experts can testify to a reasonable degree of engineering certainty that any of the so called possibilities occurred.

Attorneys for Plaintiff



Defense Motion in Limine

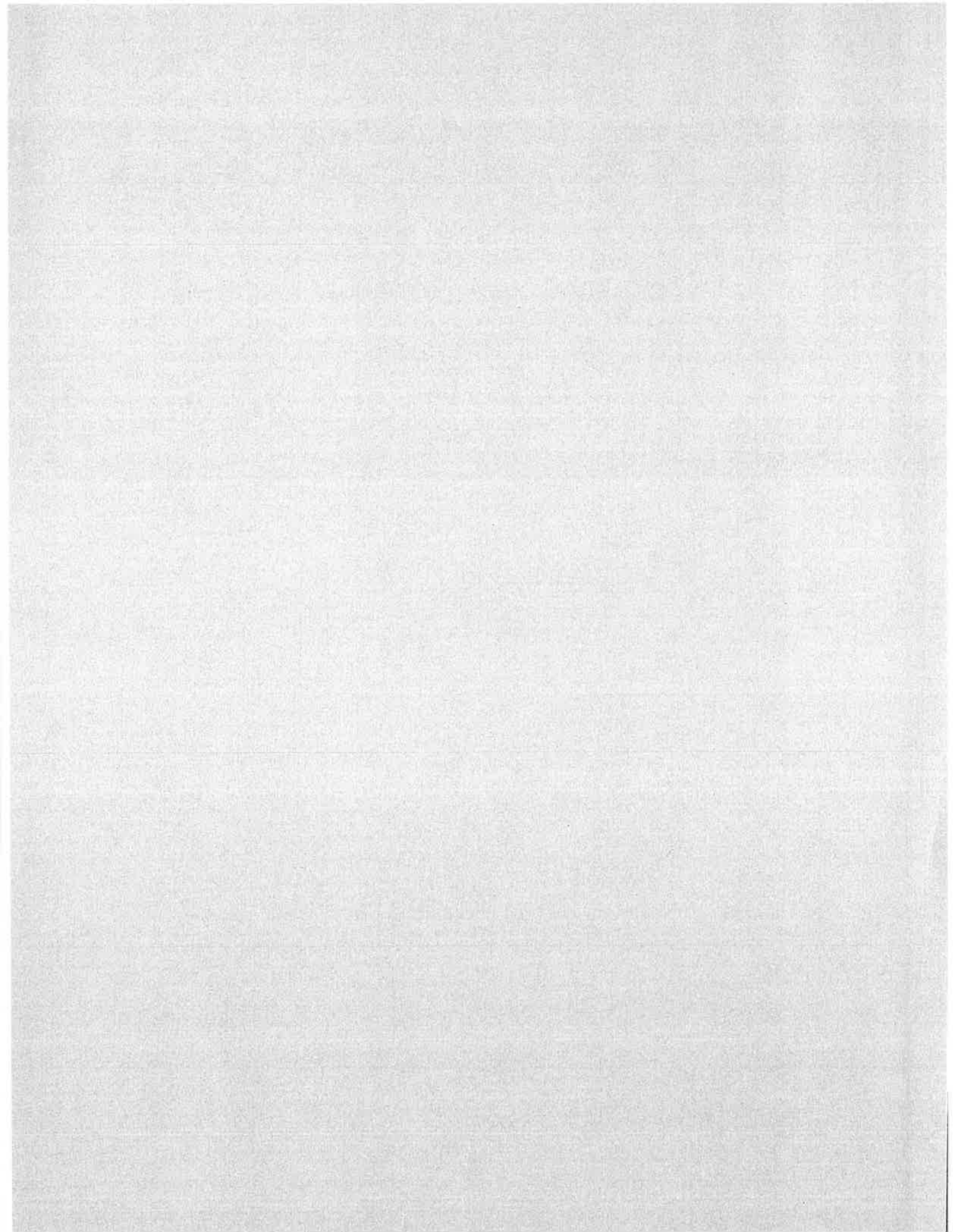
In the _____ Court of _____ County, _____
_____, Plaintiff)
vs.) Case No. _____
_____, Defendant)

DEFENDANT'S MOTION IN LIMINE

COMES NOW defendant, by and through his attorneys of record, and moves the court for its Order in Limine prohibiting plaintiff, plaintiff's counsel, or any witness for plaintiff from mentioning, directly or indirectly, before the jury or within the hearing of the jury, without the prior approval of this court, the following matters:

1. Except with respect to one properly framed and worded question, at an appropriate time during voir dire, any reference to the fact that there was, or may have been, liability insurance to indemnify defendant for the occurrence alleged in plaintiff's petition. The existence of any such matter is incompetent, irrelevant, and immaterial to any of the issues in this case, and is so highly prejudicial that the mere mention thereof within the hearing of the jury will deny defendant a fair trial despite any subsequent instruction or warning by the court for the jury to disregard the same. This motion does not prohibit the plaintiff from asking a pre-approved and appropriately framed single voir dire question as permitted by this court.
2. The fact that when _____ was injured while operating a John Deere Model 55 combine owned by defendant _____ on or about July 6, 1997, at which time said _____ stood in the combine's grain bin for the purpose of attempting to unplug the auger located at the bottom of the grain bin, and while attempting to unplug the auger at that time and date, said _____'s foot slid under the auger's guard and into the rotating auger itself causing significant laceration to his first and second toes to his left foot or the fact that defendant _____ was sued with respect to said incident in the Circuit Court of _____ County, _____ on or about April 15, 1998, which said lawsuit was subsequently dismissed with prejudice on or about July 1, 1999, for the reason that the occurrence of said incident is incompetent, irrelevant or immaterial to any issue in this case, and is not probative of whether or not defendant was negligent in the instant case or whether or not defendant possessed any prior knowledge in the instant case as a result of said incident that would be relevant to this case. The mere mention of this incident and the fact that defendant was sued regarding that incident within the hearing of the jury will deny defendant a fair trial despite any subsequent instruction or warning by the court for the jury to disregard the same.

Attorneys for Defendant



(Form Spoliation Letter)

Date

Name
Address
Address
Phone / Email

RE:

Dear (*name*)

By this letter, you are hereby given notice not to destroy, conceal or alter any paper or electronic files and other data generated by and/or stored on your computers and storage media (e.g., hard disks, floppy disks, backup tapes), or any other electronic data, such as voice mail. As you know, your failure to comply with this notice can result in severe sanctions being imposed by the Court and liability in tort for spoliation of evidence or potential evidence.

Through discovery we expect to obtain from you a number of documents and things, including files stored on your computers and your computer storage media. As part of our initial discovery efforts, you will soon receive initial interrogatories and requests for documents and things.

In order to avoid spoliation, you will need to provide the data requested on the original media. Do not reuse any media to provide this data. Although we may bring a motion for an order preserving documents and things from destruction or alteration, your obligation to preserve documents and things for discovery in this case arises in law and equity independently from any order on such motion.

Electronic documents and the storage media on which they reside contain relevant, discoverable information beyond that which may be found in printed documents. Therefore, even where a paper copy exists, we will seek all documents in their electronic form along with information about those documents contained on the media. We also will seek paper printouts of only those documents that contain unique information after they were printed out (such as paper documents containing handwriting, signatures, marginalia, drawings, annotations, highlighting and redactions) along with any paper documents for which no corresponding electronic files exist. Our discovery requests will ask for certain data on the hard disks, floppy disks and backup media used in your computers, some of which data are not readily available to an ordinary computer user, such as "deleted" files and "file fragments." As you may know, although a user may "erase" or "delete" a file, all that is really erased is a reference to that file in a table on the hard disk; unless overwritten with new

To:
Date
Page 2 of 2

data, a "deleted" file can be as intact on the disk as any "active" file you would see in a directory listing.

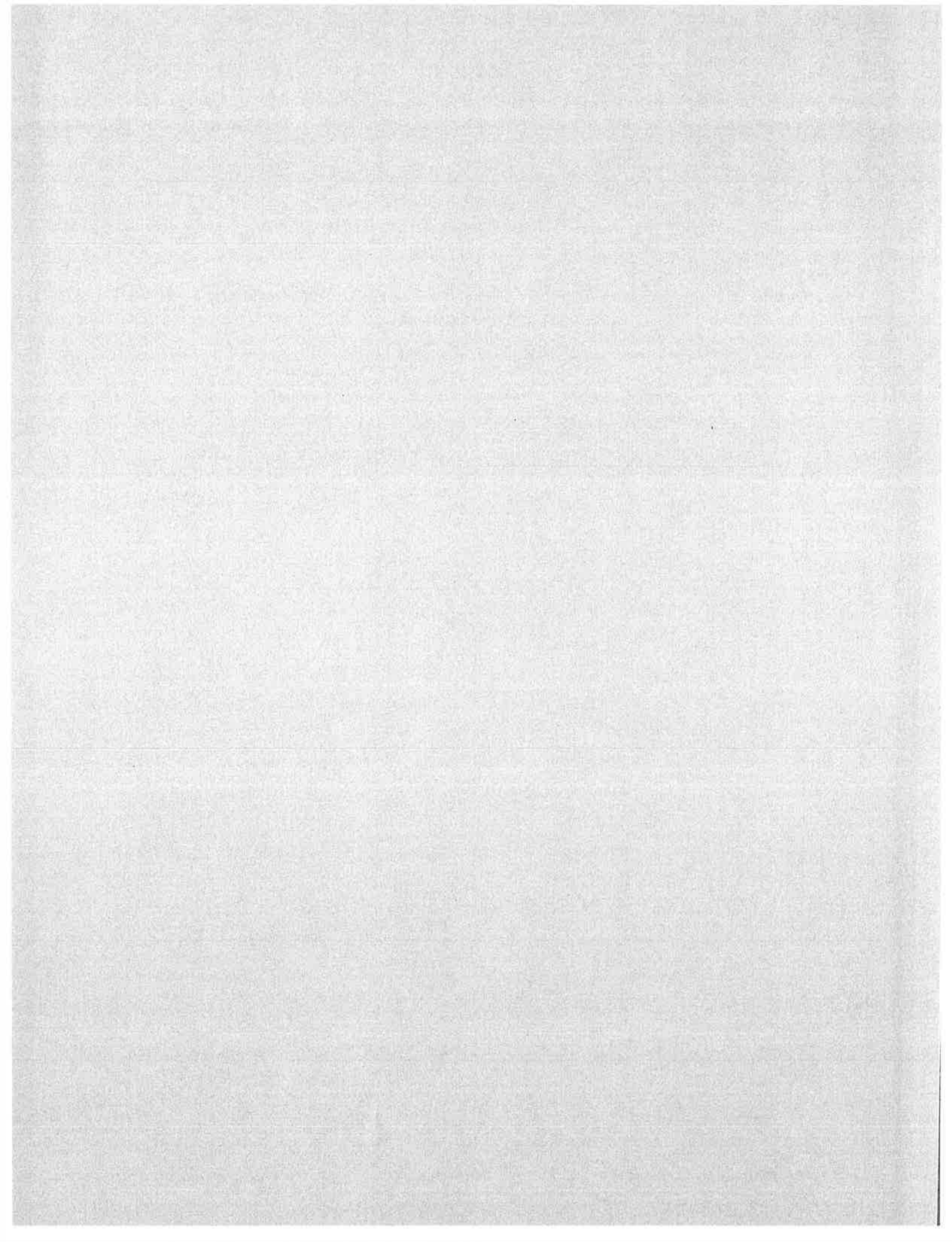
Courts have made it clear that all information available on electronic storage media is discoverable, whether readily readable ("active") or "deleted" but recoverable. *See, e.g.,* Easley, McCaleb & Assocs., Inc., v. Perry, No. E-2663 (Ga. Super. Ct. July 13, 1994; "deleted" files on a party's computer hard drive held to be discoverable, and plaintiff's expert was allowed to retrieve all recoverable files); Santiago v. Miles, 21 F.R.D. 636, 640 (W.D.N.Y. 1988; a request for "raw information in computer banks" was proper and obtainable under the discovery rules); Gates Rubber Co. v. Bando Chemical Indus., Ltd., 167 F.R.D. 90, 112 (D. Colo. 1996; mirror-image copy of everything on a hard drive "the method which would yield the most complete and accurate results," chastising a party's expert for failing to do so); and Northwest Airlines, Inc. v. Teamsters Local 2000, et al., 163 L.R.R.M. (BNA) 2460, (USDC Minn. 1999); court ordered image-copying by Northwest's expert of hoe computer hard drives of employees suspected of orchestrating an illegal "sick-out" on the Internet).

Accordingly, please preserve all electronic data and storage media that may be subject to our discovery requests.

In order to assure that your obligation to preserve documents and things will be met please forward a copy of this letter to all persons and entities with custodial responsibility for the items referred to in this letter.

Very truly yours,

(name)
(Law Firm)



LITIGATION HOLD LETTER:

TO: ALL OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND AFFILIATES
OF _____.

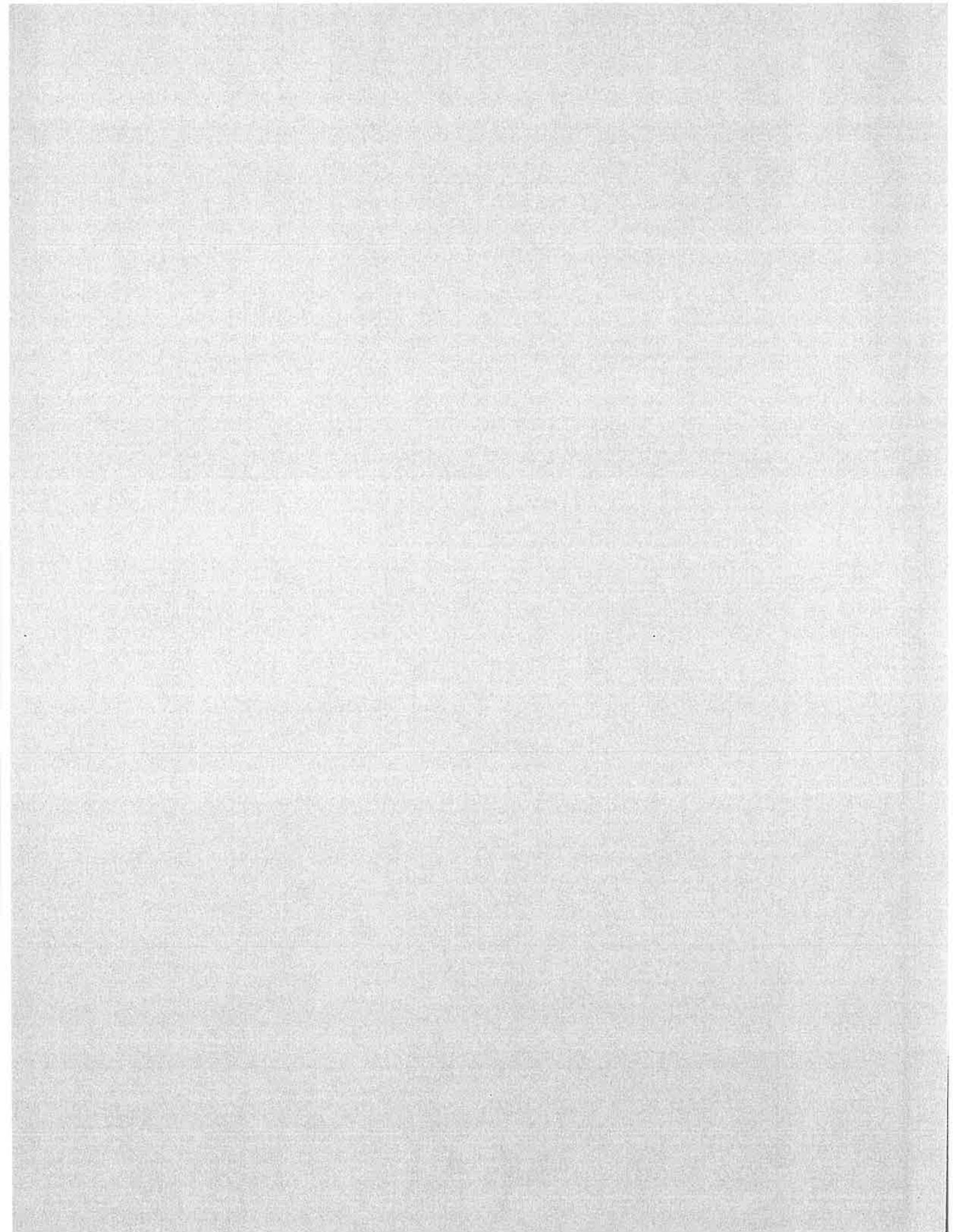
You are hereby GIVEN NOTICE that, as a result of the commencement of litigation between _____, a Delaware corporation, ("____") and _____ ("____"), you are not to destroy, mutilate, delete, or dispose of any communications, or records of any kind or sort relating to _____, its employees, agents, affiliates or its business, including, but not limited to, letters, memoranda, e-mails, contracts, invoices and any and all other communications and records, whether paper or electronic. This directive to hold, maintain, and preserve such communications and records is a duty imposed by law to preserve information possibly related to this litigation. In complying with this notice your are hereby specifically directed to do the following:

- To preserve all paper, electronic, and any other retainable communications and records, including emails or back-up tapes;
- To take all appropriate measures to preserve electronically stored information ("ESI"), i.e. stop deletion of all e-mails and other electronic communications;
- To suspend any and all of _____'s usual record retention and destruction practices.

If you have any questions regarding this directive, please contact _____,
telephone No _____

Dated this ____ day of July, 2010

_____, President



The Sedona Conference Journal

Volume 19 | Number 1

2018

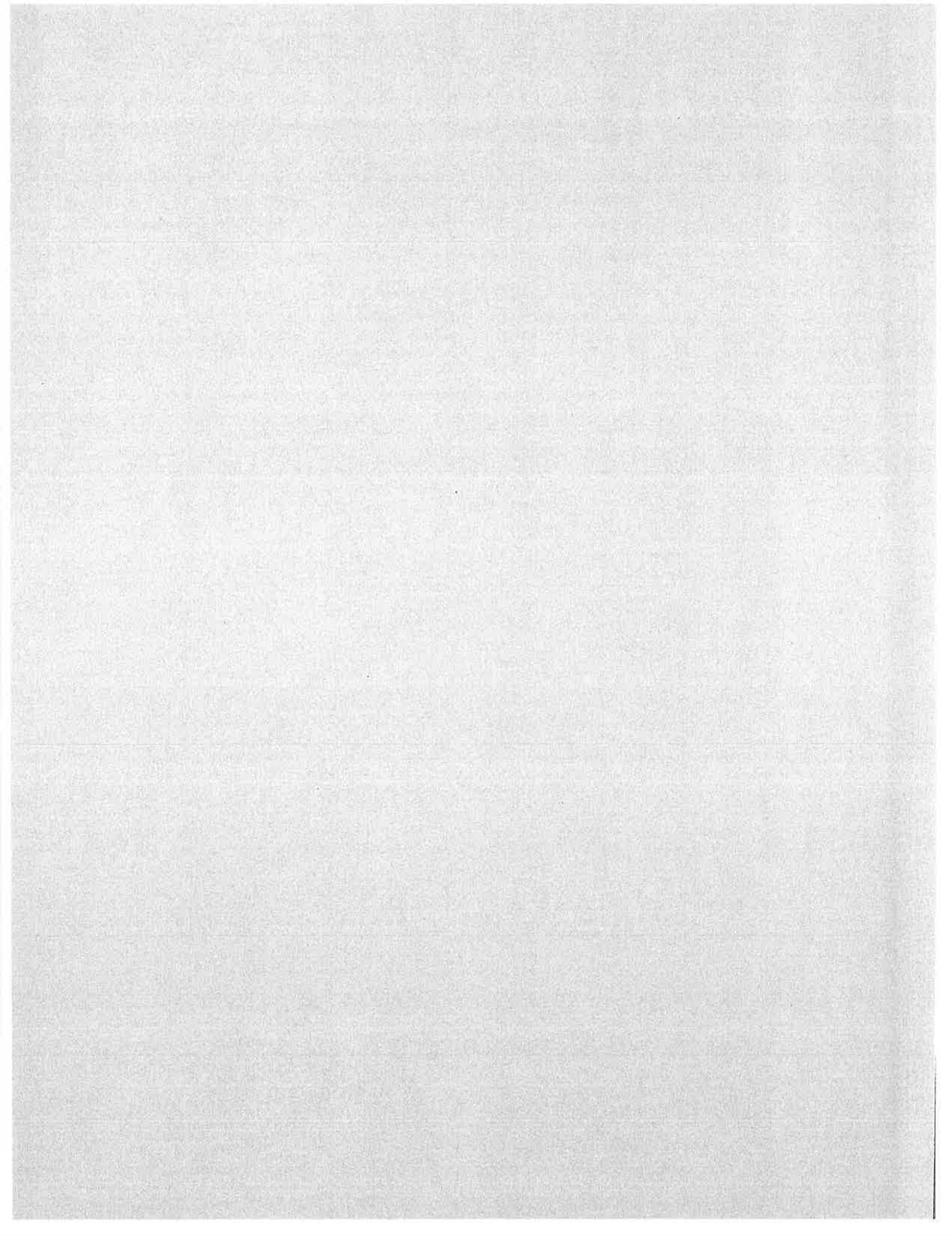
The Sedona Principles, Third Edition: Best Practices, Recommendations & Principles for Addressing Electronic Document Production

The Sedona Conference

Recommended Citation:

The Sedona Principles, Third Edition: Best Practices, Recommendations & Principles for Addressing Electronic Document Production, 19 Sedona Conf. J. 1 (2018).

For this and additional publications see: <https://thesedonaconference.org/publications>



Idaho Rules of Civil Procedure Rule 53. Masters.

(a) Appointment. The court in which any action is pending may appoint a master. Except where these rules are inconsistent with the law, the word "master" includes a referee, a commissioner, an auditor, and an examiner.

(b) Appointment is an Exception. In a jury trial, a master must not be appointed unless the issues are complicated. In actions to be tried without a jury a master must not be appointed except to perform an accounting or on a showing that some exceptional condition requires it.

(c) Compensation. The compensation for a master must be set by the court and the court may direct payment by the parties or from a fund or subject matter of the action that is in the control of the court. The master must not retain the report as security for compensation; but when a party ordered to pay the compensation allowed by the court does not pay it after notice and within the time prescribed by the court, the master is entitled to a writ of execution against the party.

(d) Disqualification of a Master.

(1) In General. Any person appointed as a master must be disqualified on the finding of a relation or a condition that would be grounds for disqualification of a judge for cause as specified in statute or these rules.

(2) Motion Practice. At any time within 14 days after receipt of notice of the appointment of a master, any party may object to the qualification of the master by filing a motion to disqualify the master, stating grounds for disqualification. The motion may be supported by affidavit and must be heard and determined by the court in the same manner as other motions. The court may hear testimony on the motion or may determine it on the record, including affidavits filed by the parties or the master.

(e) Authority and Duties of a Master. The order appointing a master may:

- (1) define the authority of the master;
- (2) direct the master to report only on particular issues, to do or perform particular acts, or to receive and report evidence only; and
- (3) fix the time and place for beginning and closing the hearings and for the filing of the master's report.

Unless the appointing order directs otherwise, a master may:

- (1) regulate all proceedings;
- (2) take all appropriate measures to perform the assigned duties fairly and efficiently;
- (3) if conducting an evidentiary hearing, exercise the appointing court's power to compel, take, and record evidence;
- (4) rule on the admissibility of evidence; and
- (5) put witnesses on oath and may examine them and may call the parties to the action and examine them on oath.

On request of a party, the master must make a record of the evidence offered and excluded in the same manner and subject to the same limitations as provided in Rule 103 of the Idaho Rules of Evidence.

(f) Meetings of Master. When a master is appointed, the clerk must give the master a copy of the order of appointment. Unless the order provides otherwise, the master must set a time and place for the first meeting of the parties or their attorneys, which must be held within 21 days after the date of the order, and must notify the parties or their attorneys. The master must act promptly and diligently. Either party, on notice to the parties and master may apply for an order requiring the master to speed the proceedings and to make the report. If a party fails to appear at the time and place appointed, the master may proceed without the party or, in the master's discretion, postpone the proceedings to a certain date, giving notice to the parties.

(g) Witnesses. The parties may subpoena witnesses for proceedings before a master as provided in Rule 45. If, without adequate excuse, a witness fails to appear or give evidence, the witness may be sanctioned and is subject to the consequences, penalties, and remedies provided in Rules 37 and 45.

(h) Statement of Accounts. When accounting issues are before the master, the master may direct the form of statement of account to be submitted and may require the testimony of a certified public accountant. On objection of a party or if the master finds that the form of a statement is insufficient, the master may require a different form of statement, or the accounts or specific items to be proved by oral testimony or written interrogatories.

(i) Master's Report. The master must prepare and file a report of the matters submitted by the court and, if required to make findings of fact and conclusions of law, the master must separately state them in the report. In an action to be tried without a jury, unless otherwise directed by the order of appointment, the master must file with the report a transcript of the proceedings and the original exhibits. The clerk must promptly notify the parties of the filing.

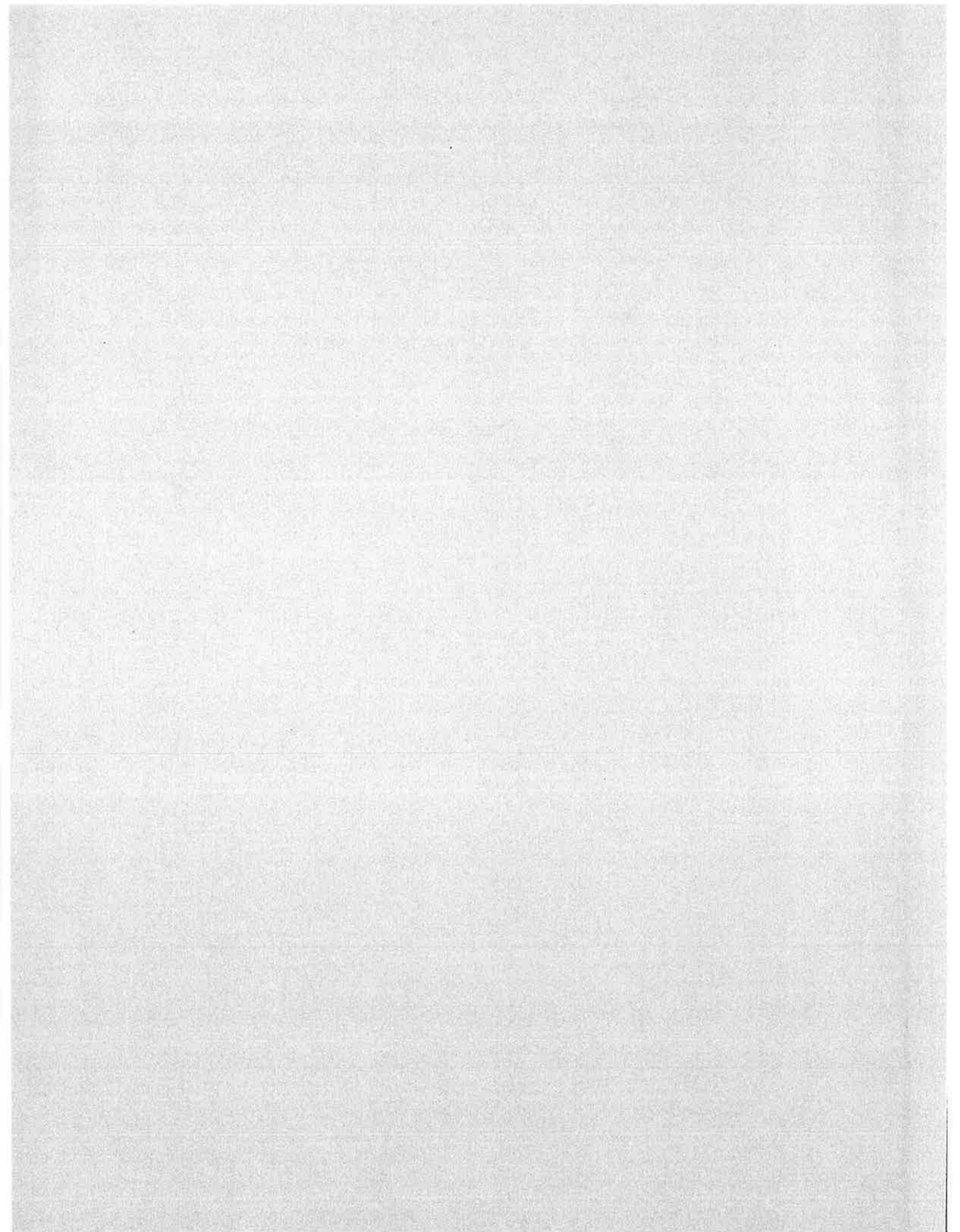
(j) Master's Findings in Actions Without a Jury. In an action to be tried without a jury the court must accept the master's findings of fact unless clearly erroneous. Within 14 days after being served with notice of the filing of the report any party may file and serve on the other parties written objections to the report. Any party may file a motion for action on the report. The court, after hearing, may adopt, modify or reject the report in whole or in part, may receive further evidence, or may resubmit the matter to the master with instructions.

(k) Master's Finding in Jury Actions. In an action to be tried by a jury the master must not be required to report the testimony or evidence relied on. The master's findings on the issues submitted are admissible as evidence of the matters found and may be read to the jury, subject to the court's ruling on any legal objections to the report.

(l) Stipulations as to Findings of Master. The effect of a master's report is the same whether or not the parties have consented to the appointment; but, when the parties stipulate that a master's findings of fact will be final, only objections about conclusions of law will be considered.

(m) Draft Report. Before filing a report a master may submit a draft to the parties for review and comment.

(Adopted March 1, 2016, effective July 1, 2016.)



(name of attorney) (ISB # _____)
(name of law firm)
(address of law firm)

Phone: (208)
Fax: (208)
E-mail:

Attorneys for _____, _____

UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO

_____)	
_____ a Delaware corporation,	)	Case No. _____
)	
Plaintiff,	)	JOINT MOTION FOR
	)	APPOINTMENT OF _____
vs.	)	AS SPECIAL MASTER PURSUANT
	)	TO RULE 53 F.R.C.P.
_____, an individual; and)	
)	
XTZ Corp, a California corporation,)	
)	
Defendants.)	
_____)	

Pursuant to this Court's Order of (date) (Dkt ____), the parties, by and through their below referenced counsel, jointly contacted retired Idaho State District Judge, _____, and described to him the nature and scope of the case and inquired of him as to his availability to serve as a Master in this matter. From this communication, the parties ascertained (1) that Judge _____ is available and willing to so serve; (2) that he has no relationships what would disqualify him under 28 U.S.C. §455; and that his fee for his services is \$_____ per hour. Therefore following further communication, the parties prepared and on (date) furnished Judge _____ with an essential file of the case with highlighted documents for his immediate review

(see index of documents attached as Exhibit "A") and made arrangements to personally meet with him on _____, to determine the detail of his duties and authority and related procedure's under Rule 53 (b)(c) FRCP (see letter to Judge _____ attached as Exhibit "B"). Following review of said documents, Judge _____ advised the parties that he was willing and able to serve as master in this case and issue a Rule 53 (b) (3) declaration on (*date*).

Based on the foregoing, the parties hereby move this Court:

(1) For leave to submit the proposed Order of Appointment of Judge _____ as Master in this case as referenced in this Court's Order (Dkt __) and in the Rule 53(b) (3) declaration by Judge _____.

(2) For the appointment of Judge McKee as Master in this, case subject to submission of the proposed Order of Appointment and the declaration of Judge McKee.

DATED this 1st day of August, 2011,

_____/s/_____

Attorney for Plaintiff
(*name of law firm*).

_____/s/_____

Attorney for Defendants
(*name of law firm*)

(Page 3 = Cert. of Service)

**UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO**

ABC Corp., a _____ corporation,)	
	)	Case No. _____
Plaintiff,)	
	)	ORDER FOR APPOINTMENT OF
vs.	)	_____ AS SPECIAL MASTER
	)	PURSUANT TO RULE 53 FRCP.
XYZ corp., _____ corporation, and MNO,)	
LLC, a _____ limited liability company,)	
)	
Defendants.)	
_____)	
)	

The parties having jointly advised the Court pursuant to Rule 35 Federal Rules of Civil Procedure ("FRCP") regarding the agreed terms and scope of authority for the appointment of _____ as Master herein, and the Court being fully advised in the premises,

IT IS HEREBY ORDERED that _____, having been duly appointed as Master herein by Order of this Court on _____, __, 20__, is hereby directed under Rule 53 (b) FRCP to proceed with all reasonable diligence to with his duties as Master, and he shall be, and hereby is, vested with the duties and authority set forth in Rule 35 (c) FRCP, and in addition thereto as follows:

1. The Master shall have the authority under Rule 35 FRCP to:

- (a) Meet with the parties and their legal counsel and their witnesses *ex parte* and / or together in his discretion in the fashion of a mediator under Rule 408 Fed. R. Evidence to assist in the parties in their proceedings, disputes, and negotiations;
- (b) Conduct evidentiary hearing and exercise the Court's power to compel, take, and record evidence;
- (c) Make reports, orders, and recommendations to the Court as provided under Rule 35 (d) and (e) FRCP;

- (d) Preserve as part of the record herein all of the Master's reports, orders, recommendations, and evidence adduced at any evidential hearing.
2. At least once a month the Master shall make a written report to the Court, which report shall be served on the parties pursuant to Rule 35(e) FRCP.
 3. The parties may make *ex parte* contact with the Master at any time in these proceedings in a *bona fide* effort to disclose and explain their respective positions and to promote progress, resolution, and efficiency in these proceedings.
 4. The parties may submit written motions on matters of fact or law to the Master, to which a response by the other party must be lodged with the Master in writing within fourteen (14) days of being served, and to which response a written reply must be lodged with the Master within seven (7) days of being served.
 5. The Master shall render a written order on all written motions of the parties as set forth in Rule 53(d) FRCP.
 6. Within fourteen (14) days following issuance of any order or recommendation by the Master, each party will have fourteen days' time in which to request that the Master reconsider his order or recommendation, and the other party may lodge a response to such request within seven (7) days of being served with said request.
 7. The Master's final orders, recommendations, and reports shall be filed with the Court and proceedings thereon shall be as set forth in Rule 53(f) FRCP.
 8. The Master's compensation for services rendered shall be at the rate of \$____ per hour. Said compensation and out-of-pocket costs shall be paid by the parties against monthly billings from the Master. Unless otherwise ordered by the Court

pursuant to Rule 53(g)(3) FRCP, Plaintiff and Defendant shall each pay one-half of said compensation and costs.

9. Upon entry of this Order, the parties shall proceed with the master as follows:

(a) The master will meet *ex parte* with each of the parties and/or together in his discretion with regard to the status of the case including, but not limited to, the status of discovery for the purpose of assisting the Parties in developing a case management order ("CMO") for submission to the Court. ding with the case in an efficient manner and formulating, refining, and serving specific discovery requests to Defendants.

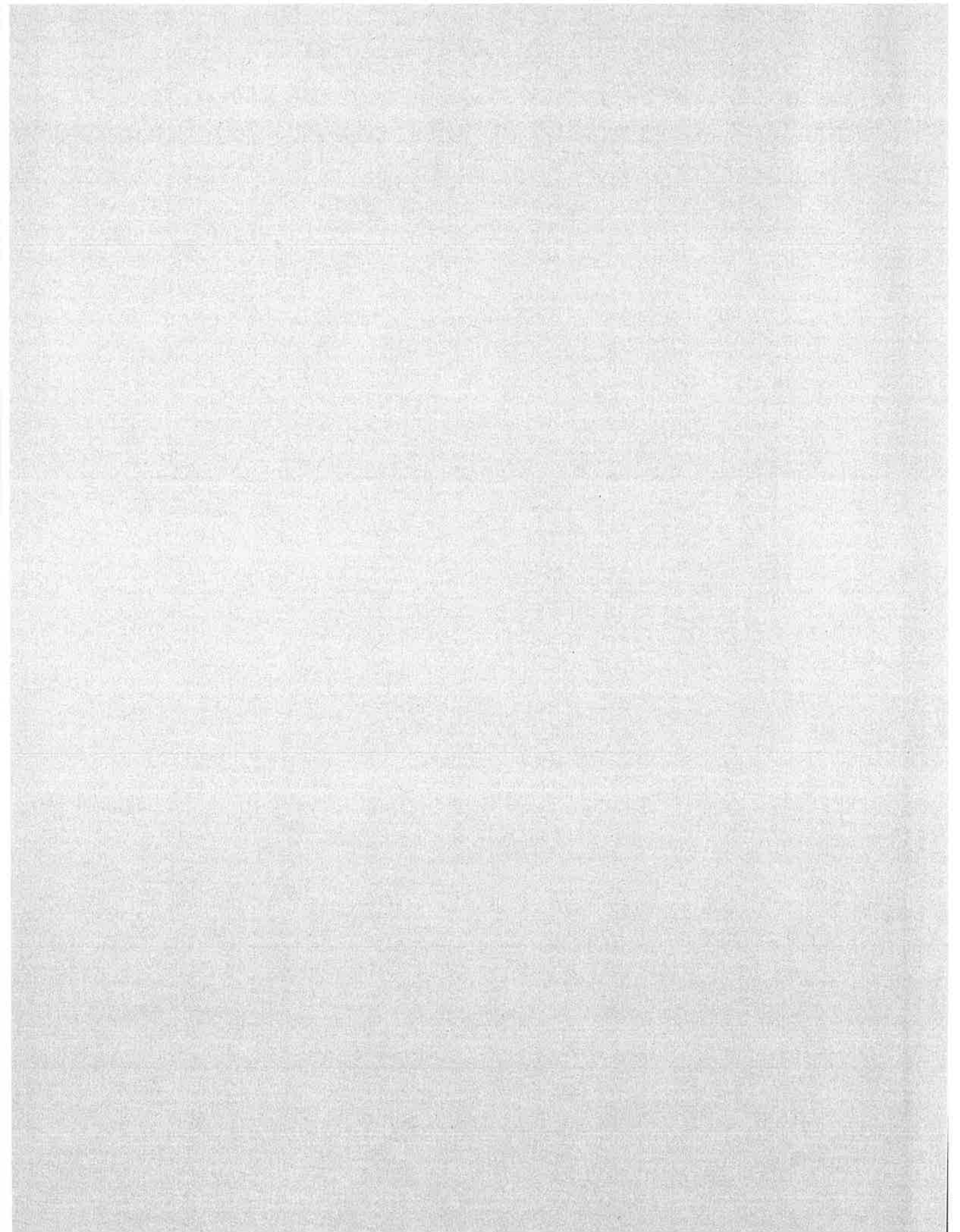
(b) Following issuance of the CMO, the Master shall meet with each of the parties *ex parte*, and/or together in his discretion for the purpose of hearing motions of the Parties on procedural issues, and assisting the Parties with their respective discovery, including in his discretion, but not limited to, hearing discovery disputes, attending depositions, assisting with formulating, refining, and serving discovery requests and responses.

(c) The same procedure described above may be initiated and repeated by the Master as appropriate.

10. The foregoing procedures and description of the services of the Master in section 9 are not meant to be construed as restrictive of the broad role and scope of the Master in these proceedings.

DATED this ____ day of _____, 20__.

DISTRICT JUDGE



Dealer Agreement

Agreement made effective as of the _____ day of _____, 20____, between _____, a _____ corporation, of _____, _____ (the "Company"), and _____ ("Dealer").

WHEREAS, the Company is the manufacturer of products that the Company has designated, or that the Company hereafter may designate, on the attached Schedule A (hereinafter "Products" or "a Product"); and

WHEREAS, Dealer has expressed a desire to engage in the sale [and service] of such Products; and

WHEREAS, the Company has agreed to appoint Dealer to act as such on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the agreements herein contained, the parties agree as follows:

1. APPOINTMENT

(a) The Company appoints Dealer as an authorized retail dealer for the period commencing on the above date and ending on _____, 20____, or on any earlier date upon which termination of this Agreement may become effective (the "term of this Agreement"). Such appointment shall apply only to Dealer's showroom and facilities located at _____ and no other location [or multiple locations].

(b) Dealer accepts the foregoing appointment and agrees to hold a sufficient quantity of Products in stock at all times.

(c) Neither Dealer nor any of its officers, agents or employees is authorized to bind the Company or to transact business for the account of the Company in any way whatsoever. The relationship of the parties is that of buyer and seller, and this Agreement shall not be deemed to create any agency or joint venture between the parties.

2. OBLIGATIONS OF DEALER

(a) Dealer shall use its best efforts to sell and promote the sale of Products. Dealer acknowledges its obligation to maintain the high standard associated with and the good will symbolized by Products, and to safeguard the interests of the Company and to refrain from any conduct which would lessen the image of the Company or Products. [Dealer acknowledges also an obligation to give the best possible service to owners of Products, wherever and whenever they may have been purchased.]

(b) The Company is entering into this Agreement in reliance upon the representations, warranties and agreements of dealer that (i) the persons who on the date of this

Agreement participate in the ownership and control of Dealer will be the only persons who have any interest, of record or beneficially, in Dealer; (ii) no other person, firm or corporation has or will have any right, option or privilege under any circumstances to acquire any interest, of record or beneficially, in Dealer; (iii) Dealer will provide written notice to the Company prior to any contemplated change in the ownership or interest in Dealer, or in the identity of the persons who have authority and responsibility for the management of Dealer's business, and will not enter into any agreement to effect any such change without the prior written approval of the Company. Failure to obtain written approval is grounds for termination of this Agreement as specified in Section 14(b)(2).

3. SALES OF PRODUCTS

(a) The Company will sell Products to Dealer, all such Products, other than tools and maintenance equipment, to be purchased by Dealer for resale at retail.

(b) Dealer will develop sales of Products to their full potential in the following territory: _____ (the "Territory").

(c) The Company reserves the right to make sales of Products to any other person, firm or corporation.

(d) The Company, although it makes no promises or representations, acknowledges that it has no present intention to appoint another retail dealer during the term of this Agreement for the sale of Products from a store, showroom or salesroom located in the Territory. [Dealer's appointment as an authorized Company dealer shall be nonexclusive. Such appointment does not constitute a grant of any specific territory or geographical area. The Company reserves the absolute right for any reason whatsoever to increase or decrease the number of dealers in the vicinity of Dealers' location at any time without notice to Dealer.] [Dealer shall have no right to, and agrees it will not, appoint any dealers, warranty service centers, or distributors of the Company.]

4. PRICES; PAYMENT FOR PRODUCTS

(a) The Company will sell Products to Dealer at such prices as may be announced from time to time by the Company, which prices shall be based upon the suggested retail selling price less a discount allowed to Dealer. Dealer will also pay any tax imposed by any law of the United States, or any state, municipality or other taxing authority, on the manufacture, ownership, distribution, use or sale of any such products if the same is not included in the invoice price payable to the Company by Dealer. The Company will keep Dealer informed of any changes or additions made from time to time in suggested retail prices, or discount schedules, and the Company reserves the right to change such prices or discounts from time to time, upon notice [specify period] to Dealer to that effect, by written notice pursuant to Section 19, provided no change in amounts charged to Dealer shall apply to Products which have been delivered [shipped] to Dealer prior to the effective date of such change. [Dealer will also pay a market promotion contribution in an amount [percentage of sales] to be determined from time to time by the Company. The

Company shall have unrestricted discretion as to the manner in which market promotion contributions are utilized by the Company in the conduct of its business.]

[(b) The Company agrees to grant a special discount of __ percent (__ %) for demonstration Products. The Company expects Dealer to retain and use such Products for demonstration purposes for at least six (6) months prior to resale. The Company reserves the right to refuse to grant such special discount more than once in each six (6) month period commencing with the date of this Agreement. In no event shall Dealer's rights to such special discount be cumulative as between different six (6) month periods.]

(c) The Company may require the Dealer to pay a deposit of a minimum of _____ percent (_____ %) of the suggested retail price for each Product ordered by it, at the time of such order. Payment of the balance for Product, or of the full purchase price for all other Products, shall be made by Dealer prior to delivery [shipment], by cash, bank or certified check, by irrevocable and confirmed bankers' media, or by such other means as may be agreed upon between the parties. The amount of such payment shall include any additional charges or taxes payable under the foregoing paragraph (a) of this Section 4.

(d) Should Dealer fail to pay for, or fail to comply with any agreed financing arrangement in respect of, any Products which have been ordered by Dealer within ten days after notice by the Company that such Products are ready for delivery [shipment] to Dealer, the Company may, with respect to any such Products (i) cause the same to be stored at the risk and expense of Dealer; or (ii) cause them to be shipped elsewhere (including return to the Company) and Dealer shall pay to the Company promptly upon demand, the expense sustained by the Company for storing, handling and shipping occasioned thereby; or (iii) sell such Products directly to any other persons, firm or corporation without obligation to pay any sum to Dealer. Dealer agrees that in the event of any such nonpayment or failure the Company shall be entitled to set off any deposit paid in respect of the Products involved against any claims the Company may then or thereafter have against Dealer. The foregoing rights of the Company are in addition to, and not in lieu of, any rights or remedies it may have by law as an unpaid seller. (At the time Dealer's account with the Company is subject to a finance charge, the Company reserves the right to stop all deliveries (shipments) to Dealer. Any such stopped deliveries (shipments) shall be considered to have been canceled by Dealer for purposes of this Agreement. Late payment is a breach of Dealer's obligations and is grounds for termination of this Agreement by the Company.)

(e) Dealer shall execute and deliver, and shall where appropriate cooperate with the Company in causing to be filed with the appropriate authorities, any and all statements and documents required or permitted by the Uniform Commercial code and any other local laws for the protection of an unpaid seller. The Company shall have a purchase money security interest in Products in Dealer's possession, including proceeds therefrom, which are acquired by dealer on credit from the Company.

(f) The Company shall at all times have the right to retain or retake possession of Products until paid in full therefor. The cost of such retention or repossession, including

any counsel fees and expenses, shall be paid by Dealer.

(g) All risk of loss or damage after delivery [shipment] shall be borne by Dealer.

5. FORECASTS; ORDERS AND REPORTS

(a) Dealer shall furnish to the Company the following reports: (i) a report [at fourteen (14) day intervals] as specified by the Company from time to time, showing Products held in stock by Dealer at the commencement of each interval, Products received during such interval; [Products delivered to customers (including customer names and addresses and the dates of delivery), new orders taken and sales of Products since the last report by Dealer; and, as and when requested by the Company] (ii) an estimate of Dealer's requirements for such period of time as the Company may reasonably request; and (iii) a summary of the inventories of spare parts and accessories carried by Dealer.

(b) Not less frequently than quarterly, Dealer shall furnish the Company a complete financial statement, including balance sheet and profit and loss statement, certified as accurate by Dealer's chief executive officer or chief financial officer. Within sixty (60) days after the close of Dealer's fiscal year, Dealer shall furnish a complete year-end financial statement, [certified by Dealer's regularly independent public accountants].

(c) Dealer will, at the time of executing and delivering this Agreement, furnish to the Company a certificate from the Secretary of State or other appropriate governmental authorities that it is in good standing in the jurisdiction in which it is incorporated or otherwise constituted. Dealer will also promptly report to the Company all changes in its corporate name or trading style and all changes in its articles of incorporation, by-laws or similar documents.

6. THE COMPANY'S RIGHT OF REJECTION OR MODIFICATION OF ORDERS; ALLOCATIONS; LIMITATION OF LIABILITY

(a) The Company will give careful consideration to each order received from Dealer, but the Company shall have the unqualified right to accept or reject each order as received, or to reduce the quantities of Products which may be ordered by Dealer. An order accepted by an officer of the Company in writing shall be deemed a firm order by Dealer.

(b) The Company undertakes affirmatively, whenever orders for Products exceed the supply available, to make [an] [a fair and reasonable] allocation of the available supply among all the Company's dealers. The decision of the Company as to such allocation shall be final and binding upon Dealer, who shall have no claim of any kind against the Company for its failure to fill orders previously received or accepted by the Company.

(c) In no event will the Company be deemed to have assumed any obligation except to fill orders as quickly as practicable, in accordance with subsections (a) and (b), and Dealer expressly agrees that the Company shall not be liable for any direct or consequential loss or damage caused by the Company's failure or inability, whether or not the same shall

have been caused by any act or omission of the Company or any other person, to make delivery [shipment] of any Products to Dealer, Dealer's sole remedy being to cancel the order and to recover the deposit in respect of Products so delayed or remaining undelivered [unshipped] for more than six (6) months after the agreed delivery [shipment] date. In the event, however, that any delivery [shipment] is delayed by a strike, lockout or by an act of God or government, or by some other cause beyond the control of the Company, the Company shall have the option to extend the time for the delivery [shipment] for the period of delay so caused. The Company shall not be required to continue to make available for sale Products or spare parts and accessories therefore.

(d) All orders placed by Dealer and all sales to it shall be subject to the provisions of this Agreement and the standard terms and conditions of sale of the Company, and any provision of any purchase order placed by Dealer which is inconsistent herewith or with such terms and conditions shall be null and void unless specific reference is made to such inconsistent provision in such purchase order and unless such inconsistent provision is accepted by an officer of the Company in writing.

7. CHANGE OF SPECIFICATIONS

The Company may at any time discontinue the supply of any Products, or make any changes in the design, specifications or materials of Products. The Company shall be under no liability to Dealer on account of any such changes; nor shall the Company be required to modify or install such changes on Products previously purchased by Dealer. Dealer shall not alter any Products, whether new or used, or do anything which will in any way tend to infringe, impeach or lessen the validity of the patents or trademarks under which Products may be made or sold or which will in any way tend to impair the reputation of the Company. Dealer shall not do anything which will impair or terminate the applicability of the warranty with respect to any Products.

8. SALES AND SERVICE FACILITIES

(a) Dealer shall establish and maintain suitable facilities for the sale, service and repair of Products. Dealer shall use its best efforts to provide effective service at reasonable rates.

(b) Dealer shall employ qualified personnel in all its departments, including a sufficient number of salesmen to handle the sale of Products, and parts and accessories therefor [and of trained service personnel to render prompt and effective service [and installation] with respect to Products. If the Company shall from time to time conduct training schools [seminars], Dealer at its expense shall send representative employees to such schools [seminars] for training in servicing and repairing Products.]

(c) Dealer shall comply with all rules and regulations issued by the Company in relation to service of products. Dealer shall promptly investigate and handle any complaint relative to products which may be assigned to Dealer by the Company for investigation and handling, and shall supply such service as may be reasonably required in the circumstances.

(d) In accordance with Section 11, Dealer agrees to implement and fulfill a sales promotion program, to give proper market representation to Products and to provide satisfactory sales performance.

(e) The Company shall have the right from time to time to inspect Dealer's premises and its records and accounts with respect to the sales [and servicing] of Products, and to make recommendations concerning the maintenance and operation thereof and the methods of displaying and selling Products. Dealers shall give careful consideration to such recommendations and shall take such recommended steps as may reasonably be necessary for the improvement of its sales [and service] facilities and activities.

9. SPARE PARTS AND TOOLS

(a) Dealer shall purchase and maintain a stock of spare parts and accessories for the repair and maintenance of Products. The Company may make recommendations with respect to increasing or changing such inventory as circumstances may require. While it is not expected that Dealer will maintain a stock from which every possible order can be filled, Dealer nevertheless recognizes and agrees that the maintenance of an adequate inventory of spare parts and accessories is of primary importance in the successful representation of the Company.

(b) The Company will from time to time submit to Dealer a current list of suggested retail selling prices for spare parts and accessories and the Company will supply such to Dealer at the suggested price less a dealer's discount.

(c) Dealer will purchase from the Company such tools and maintenance equipment as are required in connection with service of Products. The Company will from time to time submit to Dealer a current list of selling prices for tools and maintenance equipment.

(d) The Company will keep dealer informed of the prices and discounts referred to in subsection (b) and (c), and the Company reserves the right to change such prices and discounts upon notice to Dealer pursuant to Section 19.

10. COMPANY'S LIMITED WARRANTY

(a) The Company's Limited Warranty shall be incorporated as a condition of each sale made by Dealer. No order shall be accepted by Dealer without calling the attention of the purchaser to the provisions of the Company's Limited Warranty relating to Products which are the subject of the order. Dealer shall in all cases require buyers of Products to sign the acknowledgment at the foot of the Limited Warranty. Dealer shall promptly forward signed acknowledgments to the Company, and it is an express condition of the Company's processing or paying Dealer warranty claims that Dealer do so. The Company's Limited Warranty in use at the time of this Agreement, a copy of which is annexed hereto, is accepted by Dealer, and the express Company's Limited Warranty shall exclude the implication of all other warranties, liabilities, conditions or obligations,

whether or not arising from the negligence, breach of contract or other default of the Company or its agents, servants or employees. The Company will notify Dealer in writing of any change in the provisions of the Company's Limited Warranty to be issued in the future, but no such change shall be effective as to deliveries [shipments] made to Dealer, or to an ultimate purchaser, respectively, prior to the effectiveness of such notice pursuant to Section 19. Acceptance by Dealer of delivery of any Products covered by the Company's Limited Warranty after effectiveness of such notice shall be deemed acceptance by Dealer of such Warranty as changed.

(b) Dealer shall perform effective warranty service at prices established by the Company to be paid for such service to correct any defect in Products covered by the Company's Limited Warranty during the period of such Limited Warranty, and the Company will provide Dealer with spare parts and accessories necessary for such repairs under the terms of such Limited Warranty. Dealer will pay for the same and receive credit therefor. The allowance of a Company's warranty claim submitted by Dealer, or the making of any warranty policy payment, shall in no event be deemed to be a waiver of any provision of the Company's Limited Warranty or of this Agreement, nor shall any such allowance or payment be deemed to create an agreement on the part of the Company to allow a similar claim or to make a similar payment in the future. The Company shall have the right, from time to time and at any time during normal business hours, to inspect Dealer's books and records relating to any or all claims made by a purchaser or by Dealer under the Company's Limited Warranty.

(c) THE COMPANY MAKES NO WARRANTIES OR REPRESENTATIONS AS TO PERFORMANCE OF PRODUCTS OR AS TO SERVICE TO DEALER OR TO ANY OTHER PERSON, EXCEPT AS SET FORTH IN THE COMPANY'S LIMITED WARRANTY ACCOMPANYING DELIVERY OF PRODUCTS. THE COMPANY RESERVES THE RIGHT TO CHANGE THE WARRANTY AND SERVICE POLICY SET FORTH IN SUCH LIMITED WARRANTY, OR OTHERWISE, AT ANY TIME WITHOUT FURTHER NOTICE AND WITHOUT LIABILITY TO DEALER OR TO ANY OTHER PERSON BY REASON OF ANY SUCH CHANGE. UNLESS CONSIDERED UNENFORCEABLE OR UNLAWFUL UNDER APPLICABLE LAW:

(i) ALL IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY EXCLUDED.

(ii) THE LIABILITY OF THE COMPANY, IF ANY, FOR DAMAGES RELATING TO ALLEGEDLY DEFECTIVE PRODUCTS SHALL, UNDER ANY LEGAL OR EQUITABLE THEORY, BE LIMITED TO THE ACTUAL PRICE PAID BY DEALER FOR SUCH PRODUCTS AND SHALL IN NO EVENT INCLUDE INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND.

11. ADVERTISING AND PROMOTION

Decisions as to the best method of advertising and promoting Products shall at all times

rest with the Company. Dealer will not advertise or trade in Products for resale in such a manner as to prejudice the sale thereof, and will immediately withdraw any advertisement, or cease any method of trading, on being notified by the Company that it considers the same objectionable. Dealer will submit all advertisements, sales brochures and other promotional literature to the Company for approval prior to publication or distribution, which approval shall not be unreasonably withheld. Dealer shall at all times use its best efforts to bring Products to the favorable notice of the public and have a display sign in appropriate locations about its premises.

12. INDEMNIFICATION

Dealer agrees to indemnify and hold the Company harmless from and against any and all claims, damages and liabilities whatsoever, asserted by any person or entity, resulting directly or indirectly from any breach of this Agreement by Dealer or any of its employees or agents. Such indemnification shall include the payment of all reasonable attorneys' fees and other costs incurred by the Company in defending any such claims.

13. EXHIBITS AND TRIALS

Dealer will not exhibit or assist in exhibiting any Products at any exhibition or trade show, or take part or assist in or support any trial or test (except by a customer) of or relating to Products, or publish or assist to be published any advertisement or description of the result of any trial, test or individual performance of Products, without the prior written approval of the Company.

14. TERMINATION OF AGREEMENT

(a) Upon no less than sixty (60) days' notice in writing Dealer [or Company] at its option may terminate this Agreement.

(b) Upon notice to Dealer, this Agreement may be terminated by the Company in any of the following circumstances:

(1) Dealer becomes insolvent, or is adjudicated a bankrupt, or if a receiver, trustee or custodian is appointed for Dealer, or if Dealer makes an assignment for the benefit of creditors.

(2) Any change takes place in the identity of the persons who participate in the ownership, or control, or of the persons who have authority and responsibility for the management, of Dealer, or Dealer otherwise commits a breach of Section 2(b) of this Agreement.

(3) If Dealer or stockholders, directors, officers or executives thereof shall be convicted in any court of violation of law [felony] or found liable in a civil action under circumstances tending, in the Company's reasonable opinion, adversely to affect the operation of the business of Dealer or the good will or reputation of Products or the

operation of the business of the Company.

(4) If there is a material change unacceptable to the Company in the premises occupied by Dealer or if Dealer shall fail to function as a going concern or to conduct its operations in the normal course of business.

(5) If Dealer shall commit a material breach of its obligations under this Agreement or if Dealer shall conduct its business in a manner which in the reasonable opinion of the Company will result in material harm to the business of the Company or if Dealer shall fail for any legal reason to be duly qualified to act as a dealer hereunder; but in any of the circumstances mentioned in this subclause (5) the right of cancellation may not be exercised unless the Company shall have first notified Dealer of the claimed breach, conduct or failure and Dealer shall have failed within ten (10) days thereafter to cure such breach, conduct or failure or, if a longer time under the circumstances is necessary, to initiate the correction thereof and to prosecute such correction with diligence to completion.

(c) The Company shall not, by reason of any action taken pursuant to this Section or by reason of non-renewal of Dealer's appointment at the end of the term of this Agreement, be liable to Dealer for compensation, reimbursement, or damages or on account of the loss of prospective profits on anticipated sales or on account of expenditures, investments, leases or commitments in connection with Dealer's business or good will, or on any other account.

15. EFFECT OF TERMINATION OR EXPIRATION

Upon the date on which termination of this Agreement becomes effective, or at the end of the term of this Agreement (unless it is immediately succeeded by a new written agreement between the parties):

(a) Dealer shall forthwith return to the Company all books, service manuals, signs illustrating Products and the like supplied by the Company. [Dealer shall assign and transfer to the Company or to its designee all its orders for Products and deposits received from customers, provided Dealer shall be entitled to receive a commission of _____ in respect of any outstanding orders for specific retail customers previously accepted by Dealer.]

(b) The Company shall have the option but not the obligation to reacquire from Dealer unused, undamaged and unsold Products in Dealer's stock at their original cost to Dealer [at prices to be agreed upon by the parties but in no event greater than the respective prices paid by Dealer.] The Company shall likewise have the option of purchasing other Products in Dealer's possession and any brochures or other promotional material [which were purchased from the Company], at their original cost to Dealer, less a reasonable discount for use, damage or deterioration; provided, however, that if Dealer shall cease to be a dealer for any reason other than termination of this Agreement by Dealer, then the Company shall be required to purchase and reacquire unused, undamaged and unsold

spare parts and accessories, brochures and other material upon the aforesaid term.
A _____ percent (_____%) handling charge shall be paid to the Company upon any such repurchase.

(c) Dealer will promptly remove at its own expense all signs bearing the Company's name and all other trademarks owned or used by the Company in the distribution of Products and will erase or obliterate such names and trademarks from letterheads, stationery, and other forms used by Dealer. Dealer will discontinue all advertising and promotional activities representing itself to be an authorized dealer of Products.

(d) Dealer shall turn over to the Company, free of charge, all of its sales records, [service records] and customer lists and other records and data relating to sales [and service] of Products.

(e) The acceptance of any order from or the sale of any Products to Dealer after the termination or expiration of this Agreement shall not be construed as a renewal or extension thereof nor as a waiver of termination, but except with respect to discounts and in the absence of a new written agreement signed by both parties, each such transaction shall be considered to be undertaken pursuant to a contract at will and shall otherwise be governed by provisions identical with the relevant provisions of this Agreement.

(f) NEITHER THE COMPANY NOR DEALER SHALL BE LIABLE TO THE OTHER FOR DAMAGES OF ANY KIND INCLUDING INCIDENTAL OR CONSEQUENTIAL DAMAGES ON ACCOUNT OF TERMINATION OF THIS AGREEMENT FOR ANY REASON WAHATSOEVER.

16. TRADEMARKS, TRADE NAMES AND SERVICE MARKS

All uses by Dealer in its advertising or elsewhere of the Company's name or any trademark or trade name (or any mark or name closely resembling the same) now or hereafter owned or licensed by the Company shall be subject to the prior written approval of the Company. Dealer is not authorized to use any such trademark or trade name outside the Territory: (a) on sales [or service] facilities for Products; or (b) on letterheads, signs or other advertising or promotional materials indicating a sales or service facility outside the Territory; or (c) as a part of Dealer's trade style or name.

17. DISPUTES Any claim, dispute or controversy arising out of or in connection with or relating to this Agreement or the breach or alleged breach thereof shall be submitted by the parties to binding arbitration under and pursuant to the Uniform Arbitration Act of the State of _____. Said proceedings shall take place in the in the City of _____ State of _____.

18. NOTICE

All notices pursuant to this Agreement shall be in writing. Notices in writing shall be sufficient (and shall be deemed to have been duly given or made upon receipt) if

delivered in person, by courier service, by cable, by telecopier, by telegram, by telex or by registered or certified mail (postage prepaid, return receipt requested) to the party intended as the recipient thereof at the address of such party set forth at the head of this Agreement, or at such other address or to the attention of such other person as such party shall have designated for such purpose in a written notice complying as to delivery with the terms of this Section.

19. GENERAL PROVISIONS (*add section for selected general provisions*)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year hereinabove first written.

[*DEALER*]

By _____

Title:

[*COMPANY*]

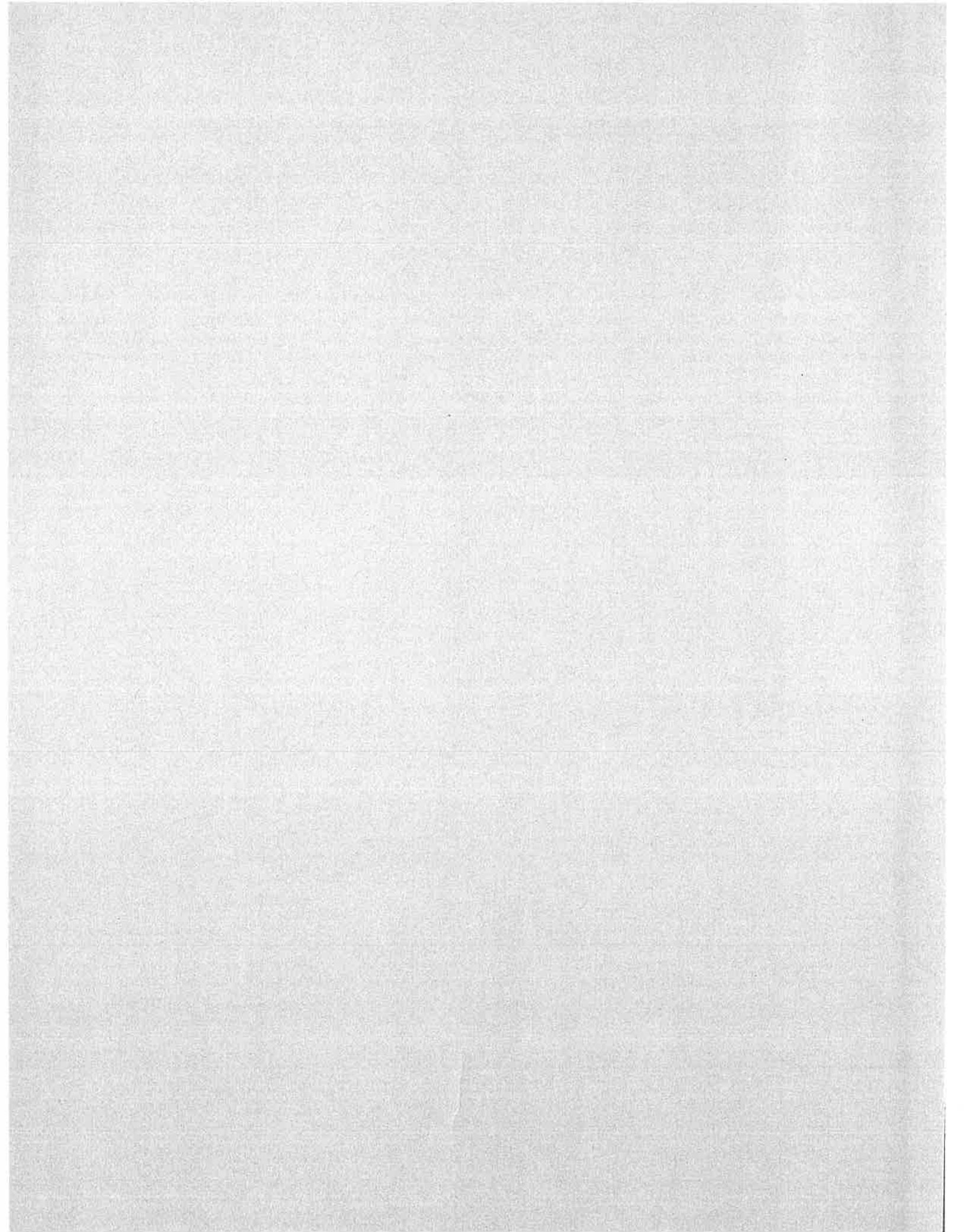
BY _____

Title:

SCHEDULE A

[*DESCRIPTION OF PRODUCTS*]

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10. General Provisions.

10.1 Entire Agreement. This Agreement constitutes the total and complete agreement between the parties, superseding all other prior agreements concerning the transaction herein described and contemplated.

10.2 Assignment. No party to this Agreement shall be entitled to assign its interest in this Agreement, unless so authorized by written consent of all of the parties hereto.

10.3 Execution of Other Documents. Each of the parties hereto agrees to execute any other documents reasonably required to fully perform the intent of this Agreement.

10.4 Binding Effect. This Agreement shall inure to and be binding upon the parties hereto, their agents, employees, heirs, personal representatives, successors, and assigns.

10.5 No Waiver of Future Breach. The failure of one party to insist upon strict performance or observance of this Agreement shall not be a waiver of any future breach of any terms or conditions of this Agreement.

10.6 Force Majeure. Except for the terms regarding payment of the Purchase Price, if a party cannot perform the other terms and of this Agreement, in whole or in part, because of any circumstance beyond its control, it must notify the other party of the circumstance and will be excused from performance under the Agreement so long as the circumstance exists. The affected party must use its best efforts to remove the circumstance causing its nonperformance and commence performance immediately when the circumstance is removed. If such circumstance arises, the parties will discuss any modification of the terms of the Agreement that may be required.

10.7 Third Parties. Nothing contained in this Agreement or implied, is intended to confer upon any person, other than the parties hereto and their successors and assigns, any rights, benefits, or remedies under or by reason of this Agreement.

10.8 Attorney's Fees. In the event of any litigation arising out of this Agreement, among or between any of the parties hereto, their heirs, personal representatives, agents, successors or assigns, the prevailing party or parties shall be entitled to recover costs and attorney's fees.

10.9 Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of _____, which shall govern the rights of the parties.

10.10 Venue. Venue for any action or legal proceeding in connection with this Agreement is in _____ County, state of _____. Each party consents to the jurisdiction of any local, state or federal court situated there and waives any objection which it may have pertaining to improper venue or forum *non conveniens* in any proceeding in any of those courts.

10.11 Interpretation. This Agreement must be interpreted in accordance with the plain meaning of its terms and not strictly for or against either party.

10.12 Execution of Multiple Originals. A number of Original counterparts of this Agreement shall be executed by these parties sufficient to provide one such counterpart to each party and its representatives.

10.13 Time is of the essence. Time is of the essence in the performance of this contract.

10.14 Severability. In the event any provision of this Agreement conflicts with the applicable law, such conflicts shall not affect the provisions of this Agreement which can be given effect without the conflicting provision.

IN WITNESS WHERE OF, the parties hereto have signed this agreement effective the day and year hereinabove set forth.